

VOL. I
TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 514

NATIONAL LABOR RELATIONS BOARD, PETITIONER

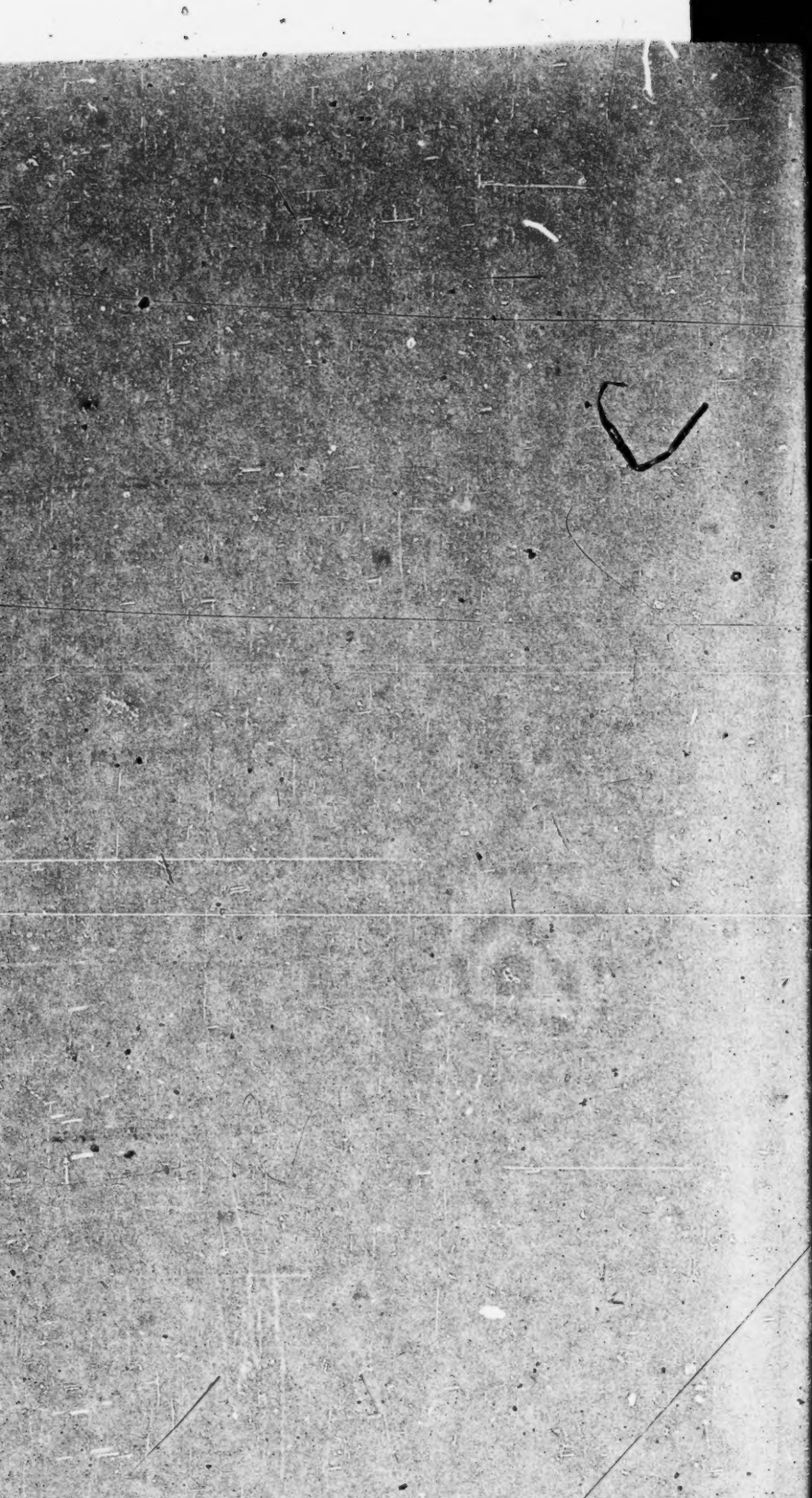
vs.

**BENJAMIN FAINBLATT AND MARJORIE FAINBLATT;
INDIVIDUALS, DOING BUSINESS UNDER THE FIRM
NAMES AND STYLES OF SOMERVILLE MANUFACTUR-
ING COMPANY AND SOMERSET MANUFACTURING
COMPANY**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT**

PETITION FOR CERTIORARI FILED DECEMBER 8, 1938

CERTIORARI GRANTED JANUARY 9, 1939



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vs.

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COMPANY AND SOMERSET MANUFACTURING
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WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT

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RECORD

UNITED STATES OF AMERICA
Before the
NATIONAL LABOR RELATIONS BOARD
Second Region

Case No. II-C-19

In the Matter of
Somerville Manufacturing Co.,
Somerset Manufacturing Co.,
and Benjamin Feinblatt
and
Harry A. Posner, duly authorized
agent of Local No. 149 in the
International Ladies Garment
Workers' Union

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that the Somerville Manufacturing Co., and the Somerset Manufacturing Co., and Benjamin Feinblatt, all doing business at Depot Square, Somerville, New Jer-

sey, have engaged and are engaging in unfair labor practices within the meaning of Section 8, subsections (1), (3) and (5) of said Act, and in the following manner:

(1). On or about September 12, 1935, the respondents discharged the following persons, Elizabeth Scheka, Lorraine Heitz, Ethel Rice, Angelina Mattei, Fay Katz and Mary Gecik, because of their activity in helping to organize the employees of respondents' shops for the purpose of collective bargaining and for the purpose of joining a recognized union.

(2). On or about September 18, 1935, the respondents or any of them refused to bargain with their employees for an increase in wages, for a reduction of hours of work and for a recognition of their organization formed for the purpose of collective bargaining, and in consequence of said refusal the employees went out on a strike.

(3). The respondents or any of them refused and still refuse to recognize Local 149, International Ladies' Garment Worker's Union as the authorized representative of the striking employees in their attempts to conciliate and adjust the differences involved in the strike.

The undersigned further charges that said respondents or any of them are engaged in interstate commerce and that said unfair labor practices affect commerce within the meaning of said Act.

(Signed) HARRY A. POSNER,

Manager.

Local No. 149 International
Ladies' Garment Workers'
Union.

Charge

Subscribed and sworn to before me this fourteenth
day of October, 1935.

EVELYN B. SMITH.
Notary Public
for New Jersey.

(SEAL)

Registered in Middlesex County.

Commission Expires 19th November, 1939.

UNITED STATES OF AMERICA
Before the National Labor Relations Board
Second Region

Case No. II-C-19

In the Matter of

Benjamin Fainblatt and Margorie Fainblatt, individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company

and

International Ladies Garment Workers Union
Local No. 149

COMPLAINT

It having been charged by the International Ladies Garment Workers Union local No. 149, 412 West Front Street, Plainfield, New Jersey that Benjamin Fainblatt, also known as Benjamin Feinblatt, and Margorie Fainblatt, also known as Margaret Fainblatt, individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, hereinafter called the respondents, have been en-

gaged in and are now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board by the Regional Director for the Second Region, as agent of the National Labor Relations Board designated by the National Labor Relations Board Rules and Regulations, Series 1 (General Rules and Regulations) Article IV, Section 1 hereby issues this complaint and alleges the following:

1. Respondents are and have been since August 7, 1934 doing business individually under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company as appears in the records of the County Clerk, Somerset County, New Jersey, having their principal office and place of business at Depot Square, Borough of Somerville, County of Somerset, State of New Jersey, and are now and at all times hereinafter mentioned have been engaged at their plant at the aforesaid address (hereinafter called the Somerville plant), in the manufacture, sale and distribution of women's sportswear.

2. Respondents in the course and conduct of their business as aforesaid, cause and have continuously caused substantially all the raw material used in the manufacture of ladies sportswear as aforesaid to be purchased and transported in interstate commerce from and through states of the United States other than the State of New Jersey to their Somerville plant in the State of New Jersey, and cause and have continuously caused a substantial amount of the ladies sportswear manufactured by them to be sold and transported in interstate commerce to, into and

through states of the United States other than the State of New Jersey from their Somerville plant in the State of New Jersey, all of the aforesaid constituting a continuous flow of commerce among the several states. -

3. Respondents by their officers and agents, while engaged at the Somerville plant, as described above, did discharge Elizabeth Scheka on or about August 21, 1935, Angelina Matteis on or about August 22, 1935, Lorraine Heitz on or about August 28, 1935, Ethel Rice on or about August 28, 1935, Mary Geek on or about August 29, 1935, Fay Katz, on or about September 16, 1935 and Anna Santoro on or about September 16, 1935, hereinafter referred to collectively as the above named individuals, and each of them, employed by respondents at the Somerville plant, as above set out, and have at all times since the aforementioned dates of discharge refused and now do refuse to reinstate said above named individuals, and each of them.

4. Respondents discharged and refused to reinstate the above named individuals, and each of them, for the reason that the above named individuals, and each of them, joined and assisted a labor organization known as the International Ladies Garment Workers Union local No. 149, and engaged in concerted activities with other employees in said Somerville plant, for the purpose of collective bargaining and other mutual aid and protection.

5. By their discharge of said above named individuals, and each of them, and their refusal to reinstate said above named individuals, and each of them, as above set forth, and by all of said acts, and each of them, respondents did interfere with, re-

strain and coerce, and are interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and did thereby engage in and are thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (1) of said Act.

6. By their discharge of said above named individuals, and each of them, and their refusal to reinstate said above named individuals, and each of them, as above set forth, and by all said acts, and each of them, respondents did discriminate and are discriminating in regard to the hire and tenure of employment of said above named individuals, and each of them, and did discourage and are discouraging membership in said International Ladies Garment Workers Union local No. 149, and did thereby engage in and are thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (3) of said Act.

7. The production employees of respondents not engaged in a supervisory capacity at their Somerville plant constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 subdivision (b) of the said Act.

8. Approximately fifty-eight (58) of the said production employees are engaged in the details of manufacture and shipment as sewing, pressing, finishing, and packing ladies sportswear. Subsequent to August 15, 1935 and prior to September 13, 1935 a majority of the said employees in said unit had designated the International Ladies Garment Workers Union local No. 149 by Harry A. Posner, its

manager, as their representative for the purpose of collective bargaining with respondents, such designation having been made by accepting membership in and paying dues to Local No. 149 of the said Union. At all times since August 28, 1935 said International Ladies Garment Workers Union local No. 149 by Harry A. Posner, its manager, has been the representative for collective bargaining of a majority of the employees in said unit and has by virtue of Section 9 (a) of said Act, been the exclusive representative of all employees in such unit for the purposes of collective bargaining in respect to the rates of pay, wages, hours of employment, or other conditions of employment.

9. On or about September 13, 1935 while the respondents were engaged at the Somerville plant as described above, the International Ladies Garment Workers Union local No. 149 by Harry A. Posner, its manager, requested the respondents through their officers, agents and employees, to bargain collectively in respect to the rates of pay, wages, hours of employment and other conditions of employment, with the International Ladies Garment Workers Union local No. 149 as the exclusive representative of all the employees in said unit. On or about said date, and at all times thereafter, the respondents did refuse and have refused to bargain collectively with said International Ladies Garment Workers Union local No. 149 by Harry A. Posner, its manager, as the exclusive representative of all the employees in said unit, and have continued to refuse to bargain with said International Ladies Garment Workers Union local No. 149 by Harry A. Posner, as the representative of his employees for the purpose of collective bargaining.

10. By all the aforesaid acts, enumerated in paragraph nine (9) hereof, and each of them, respondents have engaged in and are now engaging in an unfair labor practice within the meaning of Section 8 subdivision (3) of said Act.

11. As a result of and because of the refusal of the respondents to bargain collectively with the said International Ladies Garment Workers' Union local No. 149 as representative of their employees, as enumerated and described in paragraphs seven to ten (7 to 10) inclusive, the said Union called a strike on September 18, 1935, at which time a majority of all the production employees of the respondents at said Somerville plant went out on strike. Since September 18, 1935, and at all times thereafter, the said Union by Harry A. Posner has been the representative of the majority of all production employees of the respondent and has by virtue of Section 9 (a) of said Act been the exclusive representative of all employees in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

12. The said respondents since the date of said strike, September 18, 1935, have continued to refuse to recognize and deal with the International Ladies Garment Workers Union local No. 149 by Harry A. Posner as the representative of their employees. All of the aforesaid in violation of Section 8, subdivision (5) of said Act.

13. The aforesaid unfair labor practices occur in commerce among the several states and on the basis of experience in the aforesaid plant and others in the same and other industries, burden and obstruct

such commerce and the free flow thereof, and have led and tend to lead to labor disputes, burdening and obstructing such commerce and the free flow thereof.

14. The aforesaid acts of the respondents enumerated in paragraphs one to thirteen (1 to 13) inclusive, as hereinabove set forth, constitute unfair labor practices affecting commerce within the meaning of Section 8 subdivisions (1), (3), and (5) and Section 2 subdivisions (6) and (7) of said Act.

Wherefore the National Labor Relations Board on the twenty-eighth day of January 1936, issues its complaint against Benjamin Fainblatt, also known as Benjamin Feinblatt, and Margorie Fainblatt, also known as Margaret Fainblatt, individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, respondents herein.

NOTICE OF HEARING

Please Take Notice that on the 17th day of February, 1936, at ten o'clock in the forenoon, at the Court House, Borough of Somerville, County of Somerville, State of New Jersey, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it in accordance with its Rules and Regulations, Series 1, Article IV, and Article II, Section 22, on the allegations set forth in the Complaint, attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Second Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the complaint attached hereto within five (5) days from the date of service of said complaint.

Enclosed herewith for your information is a copy of Rules and Regulations, Series I, made and published by the National Labor Relations Board pursuant to authority granted by the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In Witness Whereof the National Labor Relations Board has caused this, its Complaint, and Notice of Hearing, to be signed by the Regional Director for the Second Region on the twenty-eighth day of January, 1936.

ELINORE W. HERRICK.

*Regional Director for the
Second Region, 45 Broad-
way, New York, N. Y.*

ANSWER

Respondents, Benjamin Fainblott and Margorie Fainblott, individuals doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company of the Borough of Somerville, County of Somerset and State of New Jersey, by way of Answer to the Complaint filed in the above entitled cause, say that:

1. Respondents appear specially by their attorney, Leon Girofsky, for the sole purpose of denying that either the National Labor Relations Board or any board or official under the National Labor Relations Act, has or ever had any jurisdiction over the respondents or the business conducted by them under the name of Somerville Manufacturing Company and Somerset Manufacturing Company, in the premises or any alleged controversy between the respondents and their employees.

2. Respondents admit the allegations of paragraph 1 of the Complaint, except so much of said paragraph as states:

"in the sale and distribution of women's sportswear"

which is denied.

3. Respondents deny the truth of the allegations of paragraphs 2, 3, 4, 5, 6, 9, 10, 11, and 13.

4. As to the statements in paragraphs 7, 8, 12, and 14, respondents have no knowledge or informa-

tion thereof sufficient to form a belief, and therefore leave the Prosecutors to their proof.

FIRST DEFENSE TO COMPLAINT

1. Respondents' business, conducted under the names of Somerville Manufacturing Company and Somerset Manufacturing Company, is a manufacturing business conducted wholly within the State of New Jersey and is not in, or does it affect interstate commerce, and is not subject to federal regulation or control.

Second Defense

2. The complaint involves transactions between employer and employees which are purely local in character and not a matter of inter-state commerce and therefore can not be enforced as against the respondents.

Third Defense

3. The matters alleged in the Bill of Complaint are intra-state in character and not subject to regulation by Congress.

Fourth Defense

4. The relations between the respondents and the employees named in the bill of complaint, to wit: Elizabeth Scheka, Angelina Matteis, Lorraine Heitz, Ethel Rice, Mary Gecik, Fay Katz, and Anna Santoro, in manufacturing and production are not subject to Congressional regulation.

Fifth Defense

5. The National Labor Relations Act, under any construction consistent with the requirements of

the Constitution of the United States of America, can not have application to the Respondents or any transactions between the respondents and their employees.

Sixth Defense

6. The Respondents have not discriminated at any time in hiring, promoting, retaining or releasing employees by reason of membership in any organization.

Seventh Defense

7. Respondents have never required their employees, as a condition of employment or otherwise, to refrain from joining, organizing, or assisting a labor organization of their own choosing.

Eighth Defense

8. Elizabeth Scheka, Angelina Matteis, Lorraine Heitz, Ethel Rice, Mary Geeik, Fay Katz, and Anna Santoro, employees named in paragraph three of the Complaint, were not refused reinstatement to employment with the respondents and were not discharged for the reason that they joined and assisted in labor organization known as the International Ladies' Garment Workers Union, but on the contrary respondents allege that said employees were dismissed momentarily on the dates alleged in the Bill of Complaint until such time as respondents were in a position to furnish said employees with further work; that said employees have not, at any time, applied or returned to the respondents for employment.

Ninth Defense

9. The National Labor Relations Board, having

taken an active part in the institution of the proceedings, in that it has issued the complaint against the respondents, is disqualified from exercising a judicial function and from hearing the proceeding.

Tenth Defense

10. The Sections 8, 9, and 10 of the National Labor Relations Act constitute an arbitrary and unreasonable interference with the contractual relationships between Respondents and their employees, all of which cause the National Labor Relations Act to be illegal.

Eleventh Defense

11. Section 7 of the National Labor Relations Act is illegal. The National Labor Relations Act is contrary to the Constitution of the United States of America in that it deprives the respondents of freedom of contract and of property without due process of law.

Twelfth Defense

12. Respondents hereby repeat the statements contained in paragraph 1 of the Answer as though the same were made a part hereof and more particularly set forth, and further say that by appearing specially herein they do not voluntarily submit to the jurisdiction of the National Labor Relations Board or any Board or official under the National Labor Relations Act, and they do not waive any of their rights to contest the jurisdiction in the cause.

Thirteenth Defense

13. Respondents specifically deny the jurisdiction of the National Labor Relations Board, the validity of the National Labor Relations Act, and

*Order Designating Trial
Examiner*

the alleged federal jurisdiction over respondents and their business under the Act; and they reserve the right fully to maintain and present before any appropriate Court of Law or Equity all of their legal jurisdictional and Constitutional rights.

LEON GIROFSKY,

*Attorney for Benjamin
Fainblott and Margorie
Fainblott, individuals, do-
ing business under the
firm names and styles of
Somerville Manufac-
turing Co. and Somerset
Manufacturing Co.*

ORDER DESIGNATING TRIAL EXAMINER

A charge having been filed in this matter, and it having appeared to the Regional Director of the 2d Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

It Is Hereby Ordered, that Robert M. Gates act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1 of the National Labor Relations Board.

By direction of the Board:

BENEDICT WOLF,
Secretary.

**PROCEEDINGS BEFORE THE NATIONAL
LABOR RELATIONS BOARD**

County Court House,
Somerville, New Jersey,
February 17, 1936.

The Above entitled matter came on for hearing,
pursuant to notice, at ten o'clock, a. m.

Before:

Robert M. Gates, Esq., Trial Examiner.

Appearances:

David A. Moscovitz, Esq., Attorney for National
Labor Relations Board.

Leon Girofsky, Esq., Central Building, Somer-
ville, N. J., Attorney for Respondents.

T. Girard Wharton, Esq., Joseph Halpern, Esq.,
Somerville, New Jersey, Associate Counsel.

Alexander Feller, Esq., Schenek Building, 41-
43 Paterson Street, New Brunswick, N. J., At-
torney for Union.

PROCEEDINGS.

MR. MOSCOVITZ:

I would like at this time to introduce into the
record certified copies of the pleadings in this case
under the signature of Mrs. Herrick, as Board's Ex-
hibit Number One.

MR. GIROFSKY:

If Your Honor please, keeping in mind the fact that we have entered a special appearance here, however for the purposes of the present motion, I wish to say that I object to the admissibility of this certification of the record and pleadings because it contains matters therein that have not been furnished to the respondents, namely, the charge made against the respondents; a demand or request was made for a copy of the charges and a refusal was had; and in addition to that, this record or certification contains an order designating your Honor as the Trial Examiner and this is the first intimation or knowledge that I have had that Your Honor was to proceed. The respondents have not had any opportunity to know who was to preside at this trial. For those reasons, I object to the entry of this record.

TRIAL EXAMINER GATES:

The objections are overruled and the matter is admitted.

MR. GIROFSKY:

May I have an exception on the record? Now, if your Honor please, I wish to file at this time a motion, the original and three copies, in accordance with the rules, asking Your Honor to dismiss this complaint on the grounds cited in the motion.

TRIAL EXAMINER GATES:

This motion being based upon an attack on the constitutionality of the Act?

MR. GIROFSKY:

That, and also the local nature of the business. The employees, as alleged in the complaint itself, are engaged in purely a local practice, that of manufacturing, it being admitted by the complaint itself.

TRIAL EXAMINER GATES:

The motion is denied.

(Further discussion ordered off the record).

You understand, of course, Mr. Girofsky, that as an agent of the Board, I must assume the constitutionality of the Act. The Board so assumes and I do, and I will not in this proceeding be able to rule that the Act is unconstitutional. This may go in with the proceedings, and of course your rights are preserved.

MR. GIROFSKY:

May I have this entered as part of the record?

TRIAL EXAMINER GATES:

Yes.

MR. GIROFSKY:

Will you note an exception to the ruling?

TRIAL EXAMINER GATES:

Certainly.

(Document referred to received in evidence, marked Board's exhibit number one).

(Document referred to received in evidence, marked Respondent's exhibit number one.)

BENJAMIN FAINBLATT, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

BY MR. MOSCOVITZ:

Q. What is your full name?

A. Benjamin Fainblatt.

MR. GIROFSKY:

I wish to object to the move of the National Labor Relations Board at this time in calling Mr. Fainblatt, the respondent, to testify in this proceeding on behalf of the complaining parties, the Board itself, or Mr. Posner, of the Union. This proceeding is in the nature of a quasi criminal proceeding and the Board is at this time seeking to have this witness testify against himself, which is not permitted under his right in the constitution and the statute in such cases.

MR. MOSCOVITZ:

Mr. Examiner, of course the complete answer to that is that this is not a criminal proceeding in the first place.

MR. WHARTON:

What is your authority?

MR. MOSCOVITZ:

The statute itself is authority for that proceeding.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. What is your address?

A. Cliff Street, Somerville, New Jersey.

Q. What is the exact name of the company with which you are associated?

A. Somerville Manufacturing Company, also Somerset Manufacturing Company.

Q. Are these separate companies?

A. No.

Q. You use the names interchangeably?

A. Yes.

Q. So that when you say Somerville Manufacturing Company, it is really at the same time the Somerset Manufacturing Company?

A. Yes.

Q. When did your companies come into existence here?

MR. GIROFSKY:

I object. I don't see where that is material or relevant to the issue.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Exception.

A. The Somerville Manufacturing Company was named in 1934. I am not positive how the Somerset Manufacturing Company, if it was named in the same year, but it has been named for a certain reason.

Q. Is it an entirely new company?

A. No.

Q. The companies had been in existence elsewhere before?

A. No.

Q. Then it is a new company?

A. Oh, if you call it a new company, call it a new company, yes. It was never in existence before.

Q. That is what I mean. What is its business address?

A. We are manufacturers, manufacturing merchandise for a jobber.

Q. Yes, but what is the business address of your company?

A. If you will explain me more accurate, I will be able to answer it. I don't understand your question.

Q. Where is your company located?

A. Here in Somerville, New Jersey, Depot Square Building—they call it also—the building it has two names.

Q. In what capacity are you associated with these two companies?

A. I am the owner.

Q. Complete owner?

A. Complete owner.

Q. Are you in charge of operations?

A. I am in charge of my own factory, but on the other hand I have four people who take care of my production.

Q. Supervisors?

A. Foreman, forelady and so forth.

Q. You are also in charge of the company's labor policy?

A. If you will explain me what you mean by labor policies, I will be able to answer it.

MR. GIROFSKY:

Do you withdraw that question?

MR. MOSCOVITZ:

I will break it down for him.

MR. GIROFSKY:

I object to the question. It is too broad. It is incomplete. Policy calls for a conclusion.

MR. MOSCOVITZ:

All right. I withdraw the question.

BY MR. MOSCOVITZ:

Q. Do you hire and fire employees?

A. As a rule, I do.

Q. Yes. Can anyone in your plant hire or fire without your authorization or approval?

A. No.

Q. All right. Now you say you are the sole owner of this company?

A. Yes.

Q. Or of these companies? Who is Marjorie Fainblatt?

A. My daughter.

Q. Does she have any ownership interest?

A. No.

Q. She is employed by you?

A. Well, she is and she is not.

Q. In what way is she not?

A. Just merely she is helping me as a daughter a father.

Q. Then is not—

A. Not as an employee.

Q. But she does not work for anyone else there?

A. Not in any capacity.

Q. She is just helping you?

A. Yes.

Q. What did you manufacture in your plant?

A. In summer I manufacture summer goods. We call that beach wear. In winter we manufacture what we call snow wear. Snow wear consists of snow suits, snow pants, which is made of a heavier material.

Q. And what do your summer goods consist of?

A. Of clear cotton goods.

Q. Slacks?

A. Yes, three-piece goods, shorts, skirts, a blouse, we call it a three-piece suit.

Q. And what materials do you use in these operations or your production?

A. As I said before, cotton goods.

Q. Exclusively cotton?

A. Yes.

Q. That is in the summer?

A. In the summer.

Q. And how about your winter products?

A. All wool-goods cloth.

Q. And those are the only materials you use?

A. Yes.

Q. Now where do you get your raw materials from?

A. They are sent to me from the jobber.

Q. And where is your jobber located?

A. Shall I answer that?

MR. WHARTON:

It is all right.

A. 520 Eighth Avenue, New York.

Q. What is his name?

A. Lee Sportswear.

Q. Do you get all your material from the Lee Sportswear?

A. Yes.

Q. Both the woolen and the cotton?

A. Yes.

Q. And do they ship it to you directly?

A. Some comes direct from their place, some they order from the mills to be delivered straight to my place.

Q. And can you give me the geographical location or locations of these mills?

MR. GIROFSKY:

I object. I don't see where this has any bearing on the dispute between this employer and the Board. If there is a dispute, I don't see where it has any bearing between this employer and the Union or the girls.

TRIAL EXAMINER GATES:

I think it does have a bearing, Mr. Girofsky, on the jurisdiction question.

MR. GIROFSKY:

If he knows, all right. I take an exception.

MR. MOSCOVITZ:

Mr. Examiner, there is one point that should be cleared up. It seems to me before we proceed any further something must be made plain and that is the constant reference to the dispute between Mr. Fainblatt and the Union. There is no dispute here between Mr. Fainblatt and the Union. The complaint here issues in the name of the National Labor Relations Board, which is a Federal agency, and this is an inquiry by the Board into this particular matter to determine whether there has been an infraction.

MR. GIROFSKY:

It is an investigation?

MR. MOSCOVITZ:

It is a hearing in the nature of an inquiry.

(Question read to the witness).

A. I cannot.

BY MR. MOSCOVITZ:

Q. Do they come from outside of the State of New Jersey?

A. Well—

MR. GIROFSKY:

I object. I withdraw the objection.

A. Some do.

Q. What percentage of your purchases come from the Lee Sportswear Company, the majority?

(Question read to the witness).

MR. GIROFSKY:

I object. This question, Your Honor, is grossly unfair. There is no testimony here that he purchased materials. Counsel has asked the

questions predicated on receipt of materials and answers have been given on that predication. There is no testimony on this fact. It is grossly unfair on the part of the government.

MR. MOSCOVITZ:

I was laboring under the assumption that when I said "where do you get your materials from?", when I originally asked the question, I assumed that he was the purchaser. Now, if there is some other arrangement, I stand corrected.

MR. GIROFSKY:

There is no testimony in this case, nor have there been any questions preceding this last question, concerning purchase of materials.

MR. MOSCOVITZ:

If I am wrong in the assumption that you buy your goods, then we will let the record stand upon this point that you get the goods from Lee Sportswear Company and other places.

TRIAL EXAMINER GATES:

Do you wish to re-phrase the question?

MR. MOSCOVITZ:

Yes. I will continue with that question so that the record will be clear. I don't want to take any advantage of Mr. Girofsky.

BY MR. MOSCOVITZ:

Q. Is this clear that you get material from Lee Sportswear Company?

A. Yes.

Q. Now, you say you get other materials from other places outside the state of New Jersey?

A. Mr. Lee Sportswear's order.

Q. Now what is your arrangement with Lee Sportswear Company?

A. My arrangement is to manufacture such goods into ready-made garments.

Q. For them?

A. Exclusively.

Q. You are the manufacturer?

A. Yes.

Q. They are the jobber?

A. Yes.

Q. They are your exclusive outlet?

A. My exclusive outlet.

MR. GIROFSKY:

I object to that.

MR. MOSCOVITZ:

He has answered the question.

MR. GIROFSKY:

I object to that. I wish counsel would explain the outlet phase of his question. I feel he is taking unfair advantage of his own witness.

MR. MOSCOVITZ:

Mr. Examiner, the witness seemed to understand the question. He answered it.

MR. GIROFSKY:

This is an informal proceeding and I don't think you should take unfair advantage of this man.

MR. MOSCOVITZ:

I don't know that I am taking unfair advantage, but I would be very glad if you would inform me how you would like me to ask the question.

MR. GIROFSKY:

You are retained in the case.

MR. MOSCOVITZ:

All right, then I will try.

BY MR. MOSCOVITZ:

Q. Do you know what an outlet is?

A. No.

Q. You don't? Then why did you answer my question?

A. Maybe I was wrong, maybe.

Q. Maybe you were wrong. Do you sell—

A. Is that what you call outlet?

Q. Yes.

A. I didn't understand the question.

Q. Do you sell only to the Lee Sportswear?

A. I don't sell to nobody.

Q. Are they your only jobber?

A. Yes.

Q. They are the exclusive jobber?

A. That's right.

Q. And all your produced materials go to Lee Sportswear, is that right?

A. Yes.

Q. Don't be afraid to answer.

A. I am not afraid. I have not stolen anything. What should I be afraid of?

MR. GIROFSKY:

Will Mr. Moscovitz explain the meaning of "jobber" as he sees it?

MR. MOSCOVITZ:

Do you want me to explain?

MR. GIROFSKY:

You can send me a copy too, but I ask you to explain.

MR. MOSCOVITZ:

I will explain if the Trial Examiner insists.

TRIAL EXAMINER GATES:

It seems to me it ought to be very simple to get at the nature of the business conducted by

Mr. Fainblatt. Perhaps Mr. Fainblatt would be more competent to explain the relationship.

A. All right. This is what they call a jobber; there is a certain way they call jobbers and manufacturers. A jobber is the one who has got material and must have them made up. He is not running his own factory but he is contracting his material to be manufactured under contract by somebody else. We are getting that material cut and we bring them around, or we call it, we make them up into ready made garments and we are getting so much per garment for the making of that garment. The dozens or by six or whatever the nature of the product of the garment is.

TRIAL EXAMINER GATES:

It comes to you cut?

THE WITNESS:

Some comes cut, some we cut ourselves, some they send raw materials to us and some they cut on their own premises.

BY MR. MOSCOVITZ:

Q. Do they pay you for this service?

A. They pay me for making up those garments.

Q. Will you tell me what your volume monthly purchases are of raw materials?

A. I am not purchasing any material whatsoever.

Q. Can you tell me what the volume monthly incoming materials is?

A. I cannot tell you, I am not buying the material, and I don't know the value of it.

Q. Can you tell me how many yards of material you get monthly?

A. I am sorry, I never took no inventory to say how much material we use in garments.

Q. Can you give me an approximation?

A. Impossible.

Q. How long have you been in the business, Mr. Fainblatt?

A. Since 1934, August 15th or 17th, when we opened up that place.

Q. And you have been making this sort of product for a long time.

A. I have been making that sort of product right here in Somerville.

Q. And you are in charge of operations?

A. I am in charge of my business.

Q. And you cannot tell me the approximate yardage that you get over any period of time?

A. No, I am sorry I cannot. It is impossible. They keep no account of the material.

Q. Your records would not show?

A. No.

Q. Can you tell me the approximate dozens of any finished products that you ship monthly?

MR. GIROFSKY:

I object to that. There is no testimony in this case that this man does ship.

BY MR. MOSCOVITZ:

Q. Do you ship, Mr. Fainblatt?

A. I send it back to the parties who I am getting it from.

Q. Someone carries it away?

A. Well, I cannot carry it.

Q. That's right. It goes by truck or railroad or something else?

A. Yes, the truckman brings it and takes it back.

Q. Can you now answer my previous question as to the approximate dozens of finished products that are taken from your plant to the jobber?

A. It is impossible for me to tell you, Mr. Moscovitz, or counsellor, rather, pardon me.

Q. You don't know how much you ship?

A. No, unless I go through my records.

Q. Have you got your records with you?

A. We have got books here.

MR. GIROFSKY:

We only have at the moment the Somerville Manufacturing Company records, the records requested by you, not the Somerset.

MR. MOSCOVITZ:

I thought they were the same company.

MR. GIROFSKY:

They are different, these were not subpoenaed.

MR. MOSCOVITZ:

I understand from Mr. Fainblatt's testimony that they are one company, and that the names are used interchangeably, that when he said one thing he spoke for the other also.

MR. GIROFSKY:

Well—

BY MR. MOSCOVITZ:

Q. Do you keep separate records?

A. Yes.

Q. Will you bring in the records of the Somerset Manufacturing Company?

MR. GIROFSKY:

I object. I feel that this witness should be subpoenaed.

TRIAL EXAMINER GATES:

I think the witness may answer.

MR. MOSCOVITZ:

Now, of course, if counsel for the respondents

is interested in delaying this proceeding and is interested in hiding all the facts—

MR. GIROFSKY:

I object to that remark. If Mr. Moscovitz thinks I am trying to impede the progress of this case, he has the right to take action under the Act.

TRIAL EXAMINER GATES:

Answer the question.

BY MR. MOSCOVITZ:

Q. Will you bring in the records of the Somerset Manufacturing Company in accordance with my request?

MR. GIROFSKY:

I think that question is grossly unfair. Mr. Moscovitz knows that he is calling for a matter from this witness that will perhaps lay the foundation for Mr. Moscovitz to take steps for contempt proceedings in this Act, if he answers it.

TRIAL EXAMINER GATES:

I don't so interpret it.

MR. GIROFSKY:

I take an exception.

TRIAL EXAMINER GATES:

You may answer.

A. What is the question again, please?

BY MR. MOSCOVITZ:

Q.—Whether or not you will bring in records of the Somerset Manufacturing Company?

A. I will be frank with you. I have books here but I don't know if it is Somerset or Somerville Manufacturing Company.

Q. Will you look and see?

MR. GIROFSKY:

Here are the Somerville books. We don't have the Somerset books.

BY MR. MOSCOVITZ:

Q. Do you have the Somerset Manufacturing Company books?

A. I will see.

Q. You don't have the Somerset books here?

A. No.

Q. Will you bring the Somerset books in this afternoon?

A. I suppose if I will be subpoenaed.

Q. I will ask you if you will co-operate to the extent of bringing them in. We can subpoena you if you prefer to be subpoenaed, but I would rather you would co-operate.

A. I will have to confer with my counsel.

MR. GIROFSKY:

I will produce them.

BY MR. MOSCOVITZ:

Q. So I will reserve any questions as to percentages of outgoing and incoming goods until this afternoon, Mr. Fainblatt. How are the raw materials shipped to you?

A. By the expressman.

Q. You get them by rail?

A. No.

Q. You don't use rail at all?

A. No.

Q. By truck?

A. Yes. We call them expressmen in our line. In the tailoring line, they call them expressmen.

Q. And who are these expressmen?

A. Different expressmen sometimes.

Q. Yes. Well, who? Well, I assume if you know you will tell me.

A. They are, as I say, sending in goods from the mills, I don't know the people. We sign for the goods.

Q. You don't know what mills?

A. No.

Q. You don't know what trucks?

A. No. It don't interest me at all. All that interests me is to get the goods and make it up and get the money for it.

Q. Your records wouldn't show?

A. No.

Q. As far as you know your goods come from any place?

A. Yes.

Q. And all you know is where you ship the goods?

A. Yes.

Q. And all you know is where you ship the goods?

A. Yes.

Q. All you know is the goods come from outside the state?

A. Yes, that's right, from New York.

Q. And they come by truck?

A. Yes.

Q. And you don't know the name?

A. No, I don't know the names.

Q. Are there constant incoming shipments?

A. One truckman is a constant one.

Q. One is constant, yes. You get shipments every day?

A. Not as a rule, sometimes we do, and some days we don't.

Q. Your shipments are seasonal?

A. It all depends.

Q. Depending on seasons?

A. It all depends.

Q. Now, that being the case, the arrangement between you and Lee Sportswear Company being such as it is, you don't execute any contract for shipping goods; do you?

A. No, no.

Q. You just have one standing arrangement?

A. Just one standing arrangement.

Q. Does your arrangement provide for certain required shipments?

A. No.

Q. Well, are you not notified by the Lee Sportswear Company when to make shipments to the company?

A. No, no. If we have the goods ready we ship it.

Q. Yes. But they send you raw materials, don't they?

A. Yes.

Q. And then they tell you what goods to make up, don't they?

A. Yes.

Q. Do they also tell you how many dozens of different things to make up?

A. Well, we call it the cutting ticket, or the stamp ticket. The stamp will show if the shipper cuts the stuff. It will show they have shipped me two hundred dozen, five hundred dozen which is cut, and consequently we have to send five hundred dozen worked.

Q. Do they send you a statement?

A. Yes.

Q. Does it tell you what to do with the goods?

A. Yes.

Q. Does it tell you also to whom the goods are to be shipped?

A. We ship them back again to Lee Sportswear.

Q. And all the material that you get is manufactured by you and then it is shipped exclusively back to Lee Sportswear?

A. Well—

Q. Can you state briefly, Mr. Fainblatt, the process that you go through in making the products sold or shipped from the time the raw materials arrive?

A. What do you mean by "process"? Do you want me to outline how the garment is made here?

Q. Take a summer slack. Now, you get raw material for the production of that?

A. Makes no difference—it is not a made up garment.

Q. Does it come to you cut?

A. I explained before some come cut, some we cut ourselves.

Q. Now, you explain to me in some detail how the material comes to you; what you do with it when you get it; and as simply as you can how the thing is processed and shipped out, just for my information.

A. As long as there is no objection from my counsel, well, when the garment comes in they are divided for different operations, what we call. A garment is made probably by fifty, twenty different operators, what we call. One will make a leg, ore will make a belt, the third will sew on a button, the fourth will do something else and the fifth press and so on. One garment may go through fifteen hands possibly for different operations in that garment.

When that garment is ready, we pack it and we ship it back.

Q. You have your own packing department?

A. Well, we have to have a man to pack it up. I can't do it all.

Q. Done in your plant?

A. Yes, sure.

Q. And do you have what would be commonly known as the shipping department, or does the packer attend to that?

A. Yes.

MR. GIROFSKY:

Let him answer the questions.

BY MR. MOSCOVITZ:

Q. Who handles the goods after packing?

A. The truckman comes and packs it on his truck.

Q. Does the truckman do his own packing?

A. No, handles it and puts it on the truck.

Q. Are any of your own employees engaged in handling the packed goods into the truck?

A. No, got nothing to do with us.

Q. Never touch it?

A. No.

Q. The truckman comes to your place?

A. Yes.

Q. Backs up to your door?

A. Exactly.

Q. The goods are there packed?

A. That's it.

Q. Now, who takes the goods and puts them into the trucks?

A. The truckman.

Q. No one helps him?

A. No.

Q. Does anyone in your plant tell him what goods to take?

A. Well, he has to be told certainly. He sees the goods right there packed.

Q. He just tells him which goods to take?

A. Well, certainly.

Q. Does he help him put it into the truck at all?

A. No.

Q. All right. What trucking concern is used in carrying the goods away from your plant?

A. Well, the main truckman we have is Sissler Brothers in Somerville, New Jersey.

Q. Is he the truckman used in carrying it into your plant too?

A. Bringing it and taking it back.

Q. Do you keep raw materials on hand, stored?

A. Yes, we have raw material there belonging to Lee Sportswear.

Q. Do you keep very much?

A. Sometimes more, sometimes less.

Q. A large volume?

A. Again I cannot answer you, I don't know, I don't take no stock.

Q. Well, Mr. Fainblatt, do you mean to tell me you don't know how much stock you have on hand?

A. No.

Q. You don't know how much raw materials you keep stored?

A. I can see it on the shelves?

Q. You don't know how many pieces you have?

A. No, I don't count them.

Q. You don't know how many dozens you manufacture?

A. I don't know—I do know when I charge the

goods, I know so many dozens were made up and were shipped.

Q. All you know is whether there is a lot or a little?

A. That is it. I can see it in front of my eyes.

Q. What part of the year do you have a lot?

A. That is a hard thing to tell. It all depends on how business is. I suppose so. If they have got more business, they send me more work. If they got less business, then they send me less work. This business is very peculiar. It is on and off. I can employ today a hundred people and tomorrow I will have no work for thirty people.

Q. And materials are stored in your plant?

A. The materials are sent to me to be cut and made up and we can accomplish it. We are cutting it as we can. It is not a question of storing it. It is a question that we have to make it up. We cannot make them up all in one time. It depends.

Q. In other words, you don't like to keep materials there long?

A. No, not as a rule. I am cutting them up as quick as I can.

Q. As soon as the material comes in you try to cut it up?

A. Yes.

Q. You don't keep it, you do it right away?

A. Yes, as we can accomplish it.

Q. But is it a process which has to be worked rapidly?

A. It is a process that they have to be made up as we can, as we can accomplish making them up. We may get into five thousand garments, it may probably take us three weeks to make them up. I can't make them up in a day.

Q. As the material comes in you make it up and it goes right out?

A. They are not kept in my possession.

Q. Is your work seasonal?

A. My work is certainly seasonal, sure.

Q. Which are your busy seasons?

A. March starts up our season.

Q. March?

A. Our season.

Q. For the summer?

A. Yes.

Q. When does your winter season start?

A. It starts sometimes earlier, sometimes later. All depends upon the demand, what styles are coming out. We shall judge around August or September, our season starts up.

Q. And how long do your seasons last in manufacturing?

A. Again there is a question. Certain class of merchandise drags along and certain class will be cut off like with an axe. It is not a thing, as I say, from today until tomorrow. It is my season. It is impossible in our line to say that.

Q. Depends entirely upon the state of the market?

A. Exactly, yes.

Q. Well, what are your operations concerned with during slack periods?

A. I don't understand what you mean.

Q. Off seasons—do you have any operations at all off seasons?

A. We always work.

Q. So, despite the fact that one season may start in March and another in August or September, there is constant operation?

A. Yes, well—to a certain degree, I want you to know.

Q. More or less?

A. I mean when we are busy, we may employ one hundred people but when we are slow, we may only employ twenty people, but we never shut down our factory.

Q. According to the answer you gave me before, am I right in assuming that you don't carry finished stock over on hand? It goes right out?

A. No.

Q. You cannot tell me what your monthly shipping volume is until you see your books?

A. Some months are more and some are less. I have to take an inventory from the books.

Q. You have the books of the Somerville Manufacturing Company here?

A. Yes.

Q. Can you tell me the monthly incoming raw material?

A. No.

Q. Shipments?

A. I can give you only the shipping but not the incoming.

Q. You don't know?

A. No.

Q. Your books wouldn't show?

MR. GIROFSKY:

Why not look at the books?

BY MR. MOSCOVITZ:

Q. This is only for outgoing?

A. Yes, we charge him on the books for whatever it is.

Q. The only records of incoming would be with Lee Sportswear?

A. No, I don't know.

Q. You don't count?

A. We give him what is a statement.

Q. You don't have the statements?

A. I don't need to carry them. I charge it to the garment and I don't need it any more. He will send me a statement for five hundred garments to be made in such a style. Once we are through with them, we are making out the bill and showing that I send you in five hundred garments at one dollar and fifty cents or two dollars for the manufacturing of the garments, bills amount to so much money.

Q. You show me from the books if you can, Mr. Fainblatt, your outgoing? This is in the name of the Somerville Manufacturing Company?

A. Yes.

Q. Would Somerset also show outgoing?

A. Yes.

Q. Why do you keep two different sets of books?

A. Inasmuch as the N. R. A. was in existence and we had been working under two different Codes, one code was thirteen dollars a minimum for forty hours; one code was twenty one dollars a minimum for thirty-five hours, and not to have any confliction between thirteen dollar minimum and twenty-one dollar minimum, there, where we came—as I explained before—not to have that confliction, I made one of them Somerville and the other one Somerset. The Somerset I have been running under the thirteen dollar minimum—forty hours; the Somerville which I manufacture a certain class of material which came under the code of twenty-one dollars, I have manufactured twenty-one dollar minimum and we have kept up the process of it to be able to give a clear knowledge to the code authorities that

we are not inflicting or infringing upon the laws or rules or whatever it was at that time.

Q. I just want to get an idea, Mr. Fainblatt, about how large an operation you are engaged in. I am not interested in anything more than that.

A. You asked me this question.

Q. I appreciate your answer.

A. Now, if you can show me what you want.

Q. Now, will you show me from your books the volume dozens of finished products that are shipped from your plant to New York over a period of time? I would appreciate that very much.

A. I will show you right here, referring to the Somerville Manufacturing.

Q. All right. We will keep the Somerset for this afternoon.

A. On October 4, we shipped Style 103, two-twelfths of a dozen skirts.

Q. When was this?

A. 1934. Three dollars a dozen—eight dollars.

Q. On October 5th, 1935? "

A. Lot 103, seven skirts. Style 728; Lot 103, fifteen dozen and four-twelfths corduroy skirts, three dollars a dozen—forty-six dollars.

Q. All right. Now October 5th—

A. Lot 111—

Q. Is this your busy season?

A. This was the Somerville Manufacturing Company's Shipments.

Q. October is supposed to be your busy season?

A. I explained it before that there is not such a thing.

Q. Do you remember whether this was or was not a busy season?

A. I will have to think first.

Q. There is nothing tricky about the question. If you don't know, say you don't.

A. I don't know, exactly. Now, for instance, here is one hundred and fifty two dozen, three dollars; five dozen four hundred and twenty-six dollars and fifty cents. October 9th, we shipped thirty-eight dozen and three-twelfths and Style 109, ten skirts, three dollars. It goes right on.

Q. Take November.

A. November 22nd—

Q. Of course, before you go to November, in October there were further shipments in addition to the ones you read here? We will skip the rest of October, but during the month of October in addition to the dates you have already given, there were other shipments?

A. Certainly you can see in here.

Q. Then go to November, 1934.

A. Yes. In November we shipped lot 127, yes.

Q. That was October.

A. Yes, my error, excuse me. Style 128, one hundred and fifty-eight—this is the sizes, total one hundred and fifty-eight.

Q. That is dozens?

A. Singles—thirty-nine dollars and fifty cents.

Q. Yes.

A. November 7th. Eighteen and a half dozen, one dollar and fifty cents a dozen. Do you want the amount I received?

Q. Just the dozens. Go on.

A. November 9th we shipped six dozens. This shows it as correct.

Q. You are very cooperative.

A. On November 14th, thirty-eight and four-twelfths—

Q. This is all 1934?

A. Yes, twenty-four hundred and nineteen dozens. A dozen and a half I shipped. On November 19 I shipped twenty-one dozen and one-twelfth. On November 22nd I shipped a hundred and fourteen dozen.

Q. Your book here starts in October, does it not?

A. Yes.

Q. Is that when your business started in October, 1934? —

A. I suppose so.

Q. What is November, just give me one more month. I understand here too, there are further shipments during the month of November, but we won't go into that.

TRIAL EXAMINER GATES:

Have you anything there for 1935?

THE WITNESS:

Yes. The Judge is asking me about 1935, January, 1935. In January, we shipped forty dozens and seven-twelfths. On January 8th, we shipped that, and we shipped one hundred twenty-one and seven-twelfth dozen on January 9th. We shipped one hundred and fifty skirts.

BY MR. MOSCOVITZ:

Q. That was in 1935?

A. January 11th, 1935 we shipped eighteen and six-twelfths dozen.

Q. What month, Mr. Fainblatt, do you have in this book, in addition to January?

A. I finished this line of work under the twenty-one dollar minimum. I finished skirt making. This was the last we shipped. On February 15th we shipped seventy-six dozen and this is the finish and nothing more.

Q. Do you have your records after February, 1935, of the Somerville Manufacturing Company?

A. I have no more records. That is discontinued.

Q. Do you have records of your other line?

A. Yes, of the Somerset Manufacturing Company.

Q. But that would be under Somerset. So from this point on anything you manufactured comes in under your other books, and you will bring those in this afternoon?

A. Yes.

Examination by Trial Examiner

B. TRIAL EXAMINER GATES:

Q. I take it these Sportswear people were not your exclusive jobber on the twenty-one dollar line?

A. Yes.

Q. Now?

A. Yes.

Q. But before too?

A. All the time. I have no other jobber that I am working for.

BY MR. MOSCOVITZ:

Q. Do you know who owns the Lee Sportswear Company, Mr. Fainblatt?

A. Must I answer that question? Leo Fainblatt.

Q. Leo. And who is Leo Fainblatt?

A. My son.

Q. Is he the complete owner?

A. No.

Q. Who else has an interest in it?

A. Irving Fainblatt.

Q. And who is he?

A. My son.

Q. And who else?

A. And Marjorie Fainblatt, my daughter.

Q. The one that helps you here?

A. Exactly.

Q. She is an owner in interest of Lee Sports wear?

A. Yes.

Q. And who else?

A. That is all.

Q. And you are not financially interested in that company?

A. No, sir.

Q. Is that a corporation?

A. No, sir.

Q. That, too, is just a business operating under a trade name?

A. A partnership.

Q. I see. You have no financial interest in it?

A. No, sir.

Q. Were you ever associated with that company?

A. No, sir.

Q. Never worked there?

A. Yes, as a worker, yes, but not as an owner.

Q. You worked for your son?

A. Oh, yes, sure.

Q. And when was this, Mr. Fainblatt?

A. Prior to 1934. I mean prior to opening this business.

Q. What sort of work did you do there?

A. Oh, the same line, supervising.

Q. What was your title?

A. My title was everything—I don't know what to say—I didn't receive no title, not even a duke.

Q. Did you have any money invested in it?

A. No.

Q. At that time?

A. Not a penny.

Q. Just worked on a salary?

A. Exactly.

Q. According to your testimony, they are jobbers?

A. Yes.

Q. Who organized that business?

A. It is not an organization.

MR. GIROFSKY:

What business are you referring to?

MR. MOSCOVITZ:

Lee Sportswear.

A. I didn't organize it. It is not my business to know their organization.

MR. GIROFSKY:

I don't think this witness is qualified to testify on that.

BY MR. MOSCOVITZ:

Q. Marjorie Fainblatt is registered here in Somerville under a trade name also?

A. She has registered under the name of Somerset Manufacturing Company.

Q. She is registered here under that name?

A. Yes.

Q. And operates with the Lee Sportswear Company as a partner; is that it?

A. She is a partner in that firm there.

Q. So that although she is a partner of Lee Sportswear, she is here in your plant working with you?

A. No, sir, she is not in my plant, she only comes in.

Q. But she is a registered owner with your company?

A. She is a registered owner but I am working myself there.

Q. You registered—you testified before that you were the complete owner.

A. Yes.

Q. How is she registered here as a part owner?

A. In place, not to conflict with the what you call them—the code authorities—so as not to have any trouble—so we went to work and I made Somerset and I gave her the permission to—

Q. Then her registration in fact means nothing?

A. No, positively nothing.

Q. Then how were the girls to know who they were working for when they work at your place? How do they know who to get compensation from?

A. We are carrying a policy, compensation policy, for the Somerset and Somerville Company. If a girl gets injured, if she happens to work at that time on a certain class of merchandise, which came under the twenty-one dollar minimum, she would have claimed then her injuries was what you call—happened under the twenty-one dollar minimum. The same operators have been working under the thirteen dollar minimum and also the twenty-one.

Q. Does Lee Sportswear participate in the payment of the compensation insurance premium?

A. No. Benjamin Fainblatt or the Somerville-Somerset Manufacturing Company pays the premium.

Q. How much time does Marjorie Fainblatt spend here with you in your work?

A. Well, she comes lately—I asked her to help me out since I had that trouble here, to help me out

if the payrolls are right. She comes only on Thursdays, our payroll day is Thursday.

Q. Just to see the payrolls?

A. Yes, that is the only day she comes down, to see if the payroll is right.

Q. Well, does the Lee Sportswear Company pay any of the bills of the Somerville Company?

A. No.

Q. Not at all?

A. No, no.

MR. GIROSKY:

What bills? I wish counsel would specify,—that is a general question.

MR. MOSCOVITZ:

Any bills.

A. No, no bills.

BY MR. MOSCOVITZ:

Q. Did it ever pay for the installation of any of your machinery?

A. No, sir.

Q. Or repairs to your machinery?

A. No.

Q. Do they have to be okayed by Miss Marjorie Fainblatt?

A. No, don't have to be okayed by her.

Q. Do you ever ship any of the produced goods to purchasers directly from your place?

A. Not I.

Q. Who does?

A. Their representative.

Q. Who is the representative?

A. Lee Sportswear.

Q. And where is the representative when that is done?

A. Right in our building.

Q. Who is their representative in your building?

A. One of their men.

Q. Who is it?

A. Chaim Yankel—I can't understand that question.

MR. GIROFSKY:

Do you know who the man is there shipping for Lee?

THE WITNESS:

Yes. Is it necessary to answer that question?

MR. GIROFSKY:

It is.

THE WITNESS:

Sol Fainblatt.

BY MR. MOSCOVITZ:

Q. Is he a son of yours?

A. Yes.

Q. And he is a representative of Lee Sportswear in your plant?

A. In his department.

Q. But he is located in your plant?

A. In my building.

Q. Does he pay rent separately?

A. Yes.

Q. Who is the landlord?

A. I am.

Q. You own the building?

A. I don't own the building but I pay rent for it.

Q. Do you pay for the space that he uses too?

A. I pay for the entire building.

Q. Then he does not pay any rent?

A. I give it to him free of charge.

Q. Yes. Now, through this representative goods

may be shipped to points other than Lee Sportswear in New York?

A. It is his privilege. He receives the goods from us and he does whatever he feels like with it.

Q. You testified before, Mr. Fainblatt, that all your goods exclusively go to Lee Sportswear in New York; is that true?

MR. WHARTON:

He said for the account of Lee Sportswear.

A. I said we are shipping them all direct to Lee Sportswear or direct to New York or upstairs to their department. It is immaterial. I am shipping them to Lee Sportswear. It is their goods. It is not mine. It is their merchandise.

BY MR. MOSCOVITZ:

Q. Then, through the Lee Sportswear Company located in your plant here, shipments are made to the Lee Sportswear Company?

A. Only to the Lee Sportswear, not to nobody else.

Q. How many people are employed at your plant, Mr. Fainblatt?

A. As I said before, it is different times.

Q. How many people are employed today?

A. I think I should judge over sixty today. I am not sure, I think so. I have not taken an inventory.

Q. You would say approximately sixty?

A. Around sixty or more.

Q. Approximately how many were employed on the 1st of September, 1935?

A. The first of September, 1935, I really couldn't tell you. It is hard for me to tell you.

Q. Could you approximate? The same number, more or less?

A. I think there were about fifty or so.

Q. How many people do you employ in a busy season?

A. As I said before, we had close to ninety.

Q. That has been your peak?

A. Very high, so far.

Q. And today you have about sixty?

A. Sixty or probably more.

Q. What is the least number you have ever employed during your operations?

A. When I started the business here, I first put on eight girls and we went along gradually. It grew.

Q. What is your monthly payroll?

A. The same thing, some months I had five thousand dollar payroll, and some months I only got two thousand dollar payroll.

Q. It would run between two and five?

A. Less, than that too. It all depends.

Q. What is the lowest monthly payroll you had?

A. I cannot tell you.

Q. Much lower than two thousand dollars?

A. I don't know.

Q. How much lower?

A. I don't know.

Q. Would it be around two thousand dollars?

A. It could be less too.

Q. Would it be much less?

A. I would have to look up the records.

Q. What was the date of the strike in your
Mr. Fainblatt?

A. I don't know.

MR. GIROFSKY:

Do you recall?

A. How can I recall—

BY MR. MOSCOVITZ:

Q. Would you recall if I said it was between September 18th, 1935?

A. Yes, September 18th, 1935, at ten o'clock, a number of employees—

Q. I just asked the date. Can you tell me what departments in the plant were affected by the strike?

A. The tailoring department.

Q. What does the tailoring department include?

MR. GIROFSKY:

Just a moment. There is no testimony that any departments were affected by the strike.

MR. MOSCOVITZ:

Testimony of witness.

MR. GIROFSKY:

Counsel calls for a conclusion, there. The question is improper.

MR. MOSCOVITZ:

The question was asked and the answer was given.

TRIAL EXAMINER GATES:

I think that is correct.

BY MR. MOSCOVITZ:

Q. What is the tailoring department? What does it include?

A. Where the garments are sewed.

Q. All your sewing?

A. All our sewing and pressing and finishing and everything.

Q. Then that is your whole operation?

A. We call that the operation.

Q. Your whole plant was affected?

A. Besides the cutting.

Q. And you testified before, if I recall correctly,

that much of your cutting is done outside of your plant; is that correct?

A. Yes.

Q. Most of your cutting?

A. It is very hard to answer this question. At certain times more cutting will be done in my place; at certain times more cutting will be done in the jobber's place.

Q. But what you are actually engaged in here is the tailoring?

A. Tailoring and cutting.

Q. Which is the substantial operation in your plant?

A. Tailoring.

Q. Now, how did the strike affect these operations?

A. Well, the strike affected it that we made up less garments.

Q. Do you recall?

A. If there are so many people less working, so many garments less are made up.

Q. Do you recall the approximate number of people that were working immediately before the strike, without any reference to the books?

MR. GIROFSKY:

If he knows. This is his witness.

BY MR. MOSCOVITZ:

Q. I don't want you to answer if you don't know.

A. I have not taken any account of how many people I had.

Q. You don't remember?

A. Not in my head.

Q. You don't remember how many went on strike?

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A. This I may do remember. There went out about twenty girls.

Q. Twenty girls.

A. And the next day they were persuaded two more girls.

Q. Twenty-two?

A. And the following week, we had one boy working upstairs, a handy man, cleans up, puts a belt on a wheel—

Q. Did he go out too?

A. On Monday the following week he went to lunch and he didn't come back. On advice of counsel I can give you what excuse he gave to one of my friends.

Q. I want to know how many people, if you know, went out on strike. Will you give a responsive answer?

A. I will respond, yes. All together there were twenty-three people.

Q. Twenty three?

A. All together.

Q. How many did that leave working for you, approximately?

A. There were more people remained working than they went down on strike.

Q. Your records would show that?

A. Oh, sure.

Q. You will have those records here?

A. On the advice of counsel.

Q. All right. Mr. Fainblatt, you testified before that you did not know how many actually were involved at the time, but now you say there were more left than went out on strike?

A. Yes.

Q. Can you give me the exact number?

A. Impossible. I may be able to do so from the records.

Q. Do you have them with you?

A. Yes.

Q. Will you show me the records?

A. On the advice of counsel.

MR. GIROFSKY:

Never mind the advice of counsel.

A. I can't answer no questions. It is not in the right place.

TRIAL EXAMINER GATES:

We will recess for three minutes.

AFTER RECESS

BY MR. MOSCOVITZ:

Q. Would your records show, Mr. Fainblatt, the number of workers that went out on the day of the strike?

A. Yes.

Q. How many?

A. Yes.

Q. You don't have to give the names, just count the numbers?

A. Twenty-one.

Q. Well, I think you had better name them?

A. All right. Irene Turcherer.

Q. The next one.

A. Louise Senna.

Q. All right.

A. Adele Moretti.

Q. Yes.

A. Mary Morano.

Q. Yes.

A. Ida Giaspantano.

Q. Yes.

A. Helen Bachelegaz.

- Q. Yes.
A. Mayme Hobbs.
Q. Yes.
A. Josephine Fedchine.
Q. All right.
A. Got it?
Q. Yes.
A. Carmella Recci.
Q. Yes.
A. Anna Santora.
Q. Yes.
A. Wanda Kelly.
Q. Yes.
A. Mary Spat.
Q. Yes.
A. Ethel Hicks.
Q. Yes.
A. Emma Delaparuta.
Q. Yes.
A. Gertrude Fields.
Q. Yes.
A. Julia Wurzman.
Q. Yes.
A. Rose De Martina.
Q. Yes.
A. Margaret Hovan.
Q. All right.
A. Jennie Targato.
Q. Yes.
A. Julia Meleusci.
Q. Yes.
A. Sophie Zigler.
Q. Those are the ones you say?
A. Walked out on strike?
Q. Do you have there Ida Gesso?^Q

A. That is all what I have got.

Q. Do you have Vincent Nekostro?

A. I ain't got nobody.

Q. You have no record of Vincent Nekostro?

A. No.

Q. Do you remember him?

A. No. I don't know no names. I only know
faces.

Q. Would you know him?

A. Is he a man?

Q. A man.

A. If he is here I would know him?

Q. Do you have Frances Cicero? Did she go
out on strike, do you know?

A. Only those here.

Q. How about Tessie Beron?

A. She went the next day.

Q. Then that would be September 19th?

A. Yes, she didn't come to work.

Q. How about Helen Lee?

A. That is not there.

Q. You don't remember about her?

A. Helen Lee?

Q. Yes.

A. Who is Helen Lee? She remained to work.
Helen Lee? Oh, yes, I saw her putting up her hand.
The presser.

Q. That is Frances Cicero.

A. I know her name, the face, the presser.

Q. Frances Cicero?

A. Yes.

Q. Is Vincent Nekostro the fellow that went out
later?

A. That is the fellow that went Monday to lunch
and didn't come back no more.

Q. And Helen Lee, you say never went out?

A. That's my records here.

MR. MOSCOVITZ:

Is Helen Lee in court?

(One of the spectators arose).

A. I don't know, maybe she did—not according to my list here.

Q. Now, would your records show which employees were discharged immediately prior to September 18th? If I read you off a list of names, would you be able to tell me? I will read you some names and you can see if they are right: Angelina Matteis?

MR. GIROFSKY:

What is the question there?

MR. MOSCOVITZ:

The workers that were discharged before the strike.

A. They were not discharged.

BY MR. MOSCOVITZ:

Q. Were they what?

A. Just laid off, or left on their own accord.

Q. Then we will leave that out. We will strike that out of the record. Would your records indicate the number that remained working on the day of the strike?

A. Yes.

Q. Would you add them and see what number you get?

A. Thirty-four. Out of those thirty-four, three left afterwards, that leaves thirty-one.

Q. Thirty-one who remained after the strike?

A. As I say, there remained thirty-four on the day but the following day, two of them quit and

the following week that Jimmie, what we call, quit on the lunch hour.

Q. So that left thirty-one?

A. Yes.

Q. I am afraid we will have to go through the names again because I understand the situation is just a little different and we will see if we can check it now before we go any further? Will you read me the names of those who remained, taking the thirty-one figure?

A. Yes. Mary Grill.

Q. Mary Grill or is it Genevieve Grill?

A. There is no Genevieve Grill. Helen Lee.

Q. Helen Lee is questionable.

MR. GIROFSKY:

I ask that the remark of counsel be left off the record.

MR. MOSCOVITZ:

He said himself he was not sure whether she was there when she stood up.

A. She did not go down that day. That is what my list shows. Genevieve Koproski; Fanny Ackerman.

Q. The next one?

A. Freddie Bittheim.

Q. Yes.

A. Mrs. Smith.

Q. Go ahead.

A. Margaret Kopf.

Q. All right.

A. James Drake.

Q. Yes.

A. Juanita Bartley.

Q. Yes.

A. Elizabeth Plum.

Q. Yes.

A. Jennie Vadinski.

Q. Yes.

A. Louise Bonner.

Q. Anna Lee. Names I don't know—there are a lot of Annas and Jennies.

Q. What is the next one?

A. You have Louise Bonner?

Q. Yes.

A. Tessie Barone. You don't want because she went the next day.

MR. GIROFSKY:

He wants the employees that remained the day of the strike.

MR. MOSCOVITZ:

I asked him for the thirty-one remaining excluding the three who went out a day or two after. That is straight, isn't it?

A. Yes. Vilma Sator. Vilma Sator.

Q. All right.

A. Mary de Nulio.

Q. All right.

A. Mary Kosar.

Q. Yes.

A. Anna Schnitzer.

Q. Yes.

A. Florence Elgard.

Q. Yes.

A. Mabel Rodenbough.

Q. All right.

A. Anna Tenan.

Q. All right.

A. Natalie Rhodes.

Q. Yes.

A. Athena Rhotiardon.

Q. Yes.

A. Sophie Cowalscinc.

Q. Yes.

A. Frances Cicero.

Q. Frances Cicero is the one that stood up?

A. That is out, you are right.

Q. All right.

A. Mary Gabinelli.

Q. All right.

A. Mabel Totten.

Q. Yes.

A. Adeline Potter.

Q. Yes.

A. Al, that is one of the boys working for us.

Q. Yes.

A. Steve Horan.

Q. All right.

A. Eddie Marsh.

Q. Yes.

A. Josephine Lazzatti. That is all.

Q. How about Genevieve Grill?

A. I don't know who Genevieve Grill is.

Q. Now, right off the record you have before you, Mr. Fainblatt, those that you say went out or quit, whatever they did do, after the strike, just put a mark after them.

A. Here you see it.

Q. Out of the list you have given me, Mr. Fainblatt, there are three names I would like to ask you about, if you have any recollection or knowledge. You referred to a gentleman by the name of Al. You also referred to a gentleman by the name of Eddie. That is Eddie Marsh?

A. Yes.

Q. Is there a gentleman by the name of Stephen?

A. Yes.

Q. Now, what type of work are those three men engaged in?

A. General work.

Q. Are they in what department?

A. All over.

Q. And what is their main job, if any?

A. Whatever they are told to do.

Q. Whatever you tell them to do?

A. Yes.

Q. Are they the gentlemen who do the packing?

A. They do everything.

Q. But do they do packing?

A. They do packing, cleaning and everything.

Q. Are they engaged in production?

A. Well, they are engaged in production, they are engaged in production, they are helping me by the tables sometimes, spreading goods, and so forth.

Q. Do they cut?

A. They are not cutters.

Q. Do they sew?

A. No, they help me.

Q. They are just general handymen?

A. Yes, exactly.

Q. Mr. Fainblatt, Genevieve Grill that you referred to—

A. I know one Grill—I got in the place one Grill.

Q. You named it and I have it on our list. I understand that is correct.

A. Mary Grill.

Q. I would like to inquire now, do you know whether or not she is married?

A. Which Grill?

Q. Genevieve Grill?

A. I don't know about her.

Q. Is Mary Grill married?

A. No, she is single.

Q. Do you know whether or not Genevieve Grill is married?

A. I haven't got no Genevieve Grill in my employ.

Q. Do you know whether or not Genevieve Koproski is the married name of Genevieve Grill?

A. I don't know her maiden name. There is a Genevieve Koproski. If it is her maiden name or her married name, I don't know.

Q. Genevieve Grill does not appear on your list?

A. No.

Q. Paragraph Three of the Complaint in this case, Mr. Fainblatt, refers to certain persons alleged to have been discharged. Have you seen the Complaint in this case?

A. What is that?

Q. Have you seen the Complaint in this case? I will show you the Complaint in this case.

A. I seen the names in it.

Q. And can you tell me whether or not the work that those people were doing is now being done by new employees?

A. Well, certainly it is being done by other employees. As they are not doing it, somebody else does it.

Q. Were new persons hired for their work?

A. Not exactly for their work.

Q. But new persons were hired for the number that went out or were alleged to have been discharged; is that it?

A. Certainly we hired new people.

Q. Do you have any records or recollections of when these new persons were taken on?

A. I have got no recollection.

Q. Have you new persons that have been hired to take the place of those who went out on strike?

A. Yes, sure.

Q. Do you have any record of when they were taken on or any recollection?

A. Recollections, I have not that.

Q. Do you recall whether it was immediately after or a week, or ten days.

A. I can't tell you.

Q. Can you approximate a time?

A. Impossible.

Q. Can you tell me how long you operated with a decreased employment roll?

A. Impossible to tell you that, don't know, except for my books to show.

Q. Will the books that you bring in this afternoon show that?

A. I don't know, I don't think so, maybe they do and maybe they don't. Those books will not show.

Q. I am simply interested in finding out about how long you operated with a lesser number of employees and when you started to take new people.

A. I couldn't tell you off hand, it is impossible.

Q. You do the hiring, don't you?

A. Yes.

Q. And you did take on new people, didn't you?

A. Must—we got new people.

Q. Was it long after the strike started that you took on new people?

A. Quite some time.

Q. Quite some time. I am trying to fix it as a matter of approximation. Would you say a month?

A. So hard for me to tell you, counsellor, I have records and my books show that I had today Mary

and tomorrow Jennie, but when—I can't carry it in my mind, it is impossible.

Q. Would you look into that and bring that back with you this afternoon?

A. If it will be necessary, I will bring it.

Q. I will appreciate it. Do you do any advertising, Mr. Fainblatt?

A. No, not yet.

Q. You have not done any at all?

A. No.

Q. Do the Lee Sportswear do advertising?

A. I don't know their business.

MR. GIROFSKY:

What information is that for?

MR. MOSCOVITZ:

For whatever business you are engaged in,—
letting the public know what you are doing.

A. I have nothing to do with the product.

Q. Does your product have a trade name?

A. No.

Q. Does the products that Lee Sportswear sell have a trade name?

A. I don't know their business.

Q. Do you put a label on the finished product?

A. No.

Q. There is no identification whatsoever?

A. No.

Q. Do you use any salesmen?

A. No.

Q. Does Lee Sportswear Company use salesmen?

A. This is their business.

MR. GIROFSKY:

If he knows.

MR. MOSCOVITZ:

Naturally, if he knows. If he does not know, I assume that he won't be able to answer.

A. I don't know their salesmen. I don't know if they are using any salesmen.

BY MR. MOSCOVITZ:

Q. You never discussed the matter with your sons or daughter?

A. About what?

Q. If they use salesmen?

A. This is their own affairs, I have my own affairs to take care of.

Q. Have you ever had any communication with anyone connected with Lee Sportswear that was a salesman?

A. No.

MR. GIROFSKY:

What sort of communication?

MR. MOSCOVITZ:

Any communication.

A. No.

BY MR. MOSCOVITZ:

Q. Do you know whether or not any one of your sons goes on the road for Lee Sportswear?

A. I am not interested in their business.

Q. Do you know?

A. I am not interested in their business.

Q. I am not asking you whether you are interested.

A. I don't know if they are going on the road or not.

Q. You don't know?

MR. GIROFSKY:

I object to these questions. I object to Mr. Moscovitz proceeding any further. The line of

questions have been answered. He does not know the business activities of Lee Sportswear. He is engaged in manufacturing these garments for himself.

MR. MOSCOVITZ:

I think we might well, Mr. Examiner, disregard the corporate fiction or the partnership fiction in this case because it is so obvious what Mr. Fainblatt's identity is with Lee Sportswear Company. He is intimately acquainted with its operation. No one could believe that a man whose sons and daughter—

TRIAL EXAMINER GATES:

I don't think you should pursue a line of questioning on which witness is not competent to answer.

MR. MOSCOVITZ:

As to whether or not he is competent seems to me a point of information. It seems to me he is evading the question.

MR. GIROFSKY:

He is your witness, Mr. Moscovitz.

MR. MOSCOVITZ:

Yes, I know, I know he is my witness, but I also know that he is a hostile witness here under subpoena and the rules of evidence are not controlling. I think the record can speak as to whether there is any neutralization or impropriety. You can take objection.

TRIAL EXAMINER GATES:

Proceed.

BY MR. MOSCOVITZ:

Q. Do you have any branch outlets, Mr. Fainblatt?

A. What is that?

Q. Do you have any branches?

A. No.

Q. This is the only plant?

A. The only plant I have.

Q. You will be back this afternoon, won't you, Mr. Fainblatt, with the records that we have requested?

A. If it will be necessary. I will be back with them:

MR. MOSCOVITZ:

What time will we be here, Mr. Examiner, this afternoon.

TRIAL EXAMINER GATES:

It depends on the convenience of counsel. As far as I am concerned, it makes no difference when we recess for lunch and how long we recess. I would just as soon recess now but it is up to counsel.

(Thereupon at twelve twenty P. M. a recess was taken until one o'clock P. M.)

AFTER RECESS

BENJAMIN FAINBLATT, witness on the stand at time of recess, resumed, as follows:

Direct Examination (Continued)

BY MR. MOSCOVITZ:

Q. Have you brought the books that I asked for?

A. Here is all my books, here.

Q. I am talking about the Somerset Manufacturing Company. What is the book that you have before you?

A. The Somerville Manufacturing Company—

Q. The book before you, I mean.

A. No, I mean now, the Somerset Manufacturing Company—what we charging for the goods.

Q. For the finished product shipped out?

A. Made up for Lee Sportswear.

Q. All right. Now what date does it start?

A. August 27th.

Q. 1934?

A. Here it is.

Q. What do you show for August?

A. It shows twelve dozen blouses at so much and so much, a price, one dollar thirty-five cents a dozen. Twelve dozen middies at one dollar and twenty-five cents a dozen.

Q. That is the price you charged the Lee Sportswear?

A. That is what I charged for making up that number of blouses.

Q. Then you have—

A. One hundred dozen middies again.

Q. That is August?

A. August 29th.

Q. All right.

A. August 29th again. Ten dozen, Lot 500 shirts, one dollar and seventy-five cents a dozen.

Q. That is pleated skirts?

A. Yes, pleated skirts. Oh, you know what is pleated skirts.

Q. I used to wear skirts once.

A. August 30th, four dozen pleated skirts—forty-seven dozen—sixty-two and one-twelfth dozen blouses; thirty-six dozen skirts; sixteen dozen blouses—higher price and lower price. Sixteen dozen blouses.

Q. That is August 30th, 1934?

A. Yes.

Q. Then what have you got?

A. Then we got to September: Fifty-five dozen skirts, one dollar and seventy cents, pleated skirts.

Q. September 1st, 1934, you have just been referring to?

A. Yes.

TRIAL EXAMINER GATES:

That would be winter business?

THE WITNESS:

Only the winter stuff. See, at that time we made blouses and middy blouses, what we call, you know, the little blouses the girls wear and the little skirts we had been making that time. Thirteen dozen middies, one dollar twenty-five cents.

Q. On September 4th, 1934, what have you got there?

A. One hundred and thirty-two blouses at two dollars and twenty-five cents. Twenty-seven and nine-twelfths of a dozen samples, blouses.

Q. That is September 4th?

A. Yes.

Q. What else?

A. Seven and seven-twelfths of a dozen also blouses, at a dollar and seventy-five cents. This is skirts—and so is this here skirts.

Q. All 1934?

A. Yes.

Q. Go on.

A. Fourteen and one-twelfths of a dozen at one dollar and twenty-five cents; thirty-seven dozen at one dollar and fifty cents. September 3rd, thirteen and four-twelfths of a dozen skirts.

Q. Just give me the volume of dozens in a day.

A. Thirteen and four-twelfths dozen. September 5th, nine-twelfths of a dozen—thirty-one and nine-twelfths of a dozen. I am sorry. Sixty and one-twelfths of a dozen. Ninety-four and four-twelfths of a dozen; fifteen and ten-twelfths of a dozen; five and eight-twelfths of a dozen.

Q. And what is that volume—sixteen hundred?

A. That is value. They valued their merchandise, what it cost them.

Q. I see. So it is the value of shipments of that day?

A. Three hundred thirteen dollars and ten cents. That is what they paid me, three hundred thirty-eight dollars.

Q. Go on.

A. The 7th. Fifty and two-twelfths dozen skirts; thirty-one dozen blouses and a dozen skirts; and three dozen blouses.

Q. That is the value of—

A. I don't know their value. One hundred twenty-nine dollars and fifty cents.

Q. For September 7th, 1934?

A. For that work what I made that day.

Q. And September 11, 1934?

A. One hundred and twelve and one-twelfth of a dozen in blouses; twenty-four and one-twelfth of a dozen also blouses.

Q. What are those?

A. A package of—what does this mean. I gave a package along to one of our men to take it back to New York.

Q. Raw materials?

A. I suppose so.

Q. What is that?

A. Good ends.

Q. Good ends?

A. Yes.

Q. On the 13th of September?

A. Fifty-seven and two-twelfths of a dozen and this is two-twelfths of a dozen pleated skirts, seventeen and two-twelfths of a dozen, twenty-six dozen skirts. On the 14th, eighty-seven and eleven-twelfths of a dozen blouses, twenty-six dozen skirts, three skirts, three skirts, five dozen skirts, pleated.

Q. On September 15th?

A. Eighteen pieces. See, he marked it pieces. This is skirts because I know the lot number. Twelve and six-twelfths of a dozen pleated skirts; sixty-seven and seven-twelfths of a dozen, call it also skirts. On the 17th—

Q. What is this? One lot of buttons?

A. They sent us in too many buttons. We are sending this back. See, it is not charged.

Q. On the 17th of September?

A. Seven pieces, also skirts. See, the lot number will correspond with this here.

Q. Just read it off, you don't have to explain.

A. Seven pieces—thirty-nine and ten-twelfths of a dozen, what is also skirts.

Q. On September 17th?

A. Twenty-four and eleven-twelfths of a dozen.

Q. Skirts?

A. Yes.

Q. September 18th?

A. Twenty-one and six-twelfths of a dozen.

Q. What are they, skirts?

A. Yes, it looks like skirts. Six and three-twelfths of a dozen.

Q. Skirts?

A. I suppose so. Forty-five pieces, call them

skirts too. Two and one-twelfth dozen skirts. I don't know what that is. I can't remember from a year ago. Eighty-nine pieces. I think this is pleated skirts. Twenty-one and one-twelfth of a dozen, make that blouses. Six pieces of skirts, pleated skirts. Thirty-two dozen blouses.

Q. September 20th?

A. Forty and five-twelfths of a dozen, it says lot number 502. This I know. Forty-six dozen skirts, eighteen dozen skirts, four blouses, thirty-three and one-twelfth dozen blouses. Nine-twelfths of a dozen skirts. Twenty-four and nine-twelfths of a dozen skirts.

Q. On September 21st?

A. I am getting tired—I am a lucky man I can read. Fifty and eleven-twelfths of a dozen blouses. Fifty-nine and seven-twelfths of a dozen skirts. Eleven and five-twelfths of a dozen skirts. Forty-nine pieces pleated skirts. September 22nd. Eighteen and five-twelfths of a dozen skirts. Eleven and a half dozen pleated skirts. Twenty-three and one-twelfth dozen skirts. Thirty-seven and one-twelfth of a dozen pleated skirts. Seventeen and ten-twelfths of a dozen skirts. Fourteen dozen blouses.

TRIAL EXAMINER GATES:

What is the date of that?

A. September 24. Now, it goes twenty-five; thirty-four and two-twelfths of a dozen skirts; eleven and four-twelfths of a dozen blouses; thirty-one and one-twelfth of a dozen pleated skirts; seventy-two and seven-twelfths of a dozen blouses; ten and five-twelfths of a dozen skirts. Thirty-eight dozen skirts.

Q. Now you are talking about—

A. September 26th.

Q. Go on.

A. Sixty-eight dozen blouses.

Q. September 27th continued?

A. Twelve and six-twelfths of a dozen skirts. Twenty-two and seven-twelfths of a dozen skirts. You are tiring me out.

Q. You are now on September 26th, I think, is that right?

A. Yes.

Q. Go on.

A. Nineteen and eleven-twelfths dozen blouses, forty-nine and three-fourths dozen skirts. Thirty-eight dozen and two-twelfths of a dozen skirts. Nine and four-twelfths of a dozen skirts. Thirty-four and a half dozen skirts. Twenty-nine and ten-twelfths of a dozen skirts. Six skirt samples.

Q. Now you come to October 5, 1934?

A. Yes.

Q. Go on.

A. Fourteen dozen skirts, ninety-nine and three-twelfths of a dozen assorted skirts, mixed lot. Twenty-eight dozen skirts. Twenty-eight and six-twelfths of a dozen pleated skirts.

Q. That is October 9th?

A. Yes, October 9th. Sixty and three-twelfths dozen children's skirts. They are all children's skirts. Sixty-two dozen tweed skirts.

Q. October 10th?

A. Yes. Two dozen pleated skirts. Three skirts pleated. October 11th, twenty-seven and nine-twelfths of a dozen children's skirts. Twenty-seven and five-twelfths of a dozen children's skirts. Twelve and eleven-twelfths of a dozen pleated skirts. Twenty-one and eight-twelfths of a dozen skirts. October 10th.

Q. Now you go to a sheet which shows October 10, 1934?

A. Yes. Seven dozen pleated skirts. October 14th, twenty-eight and six-twelfths of a dozen skirts.

Q. October 15th?

A. October 15th. Nine dozen navy skirts, seven dozen pleated skirts. Twenty-seven and eleven-twelfths of a dozen skirts.

Q. October 18th?

A. Twenty-five and six-twelfths of a dozen skirts. Twenty-seven and eleven-twelfths of a dozen skirts. Twenty-seven and eleven-twelfths of a dozen skirts. Twenty-four and eleven-twelfths of a dozen skirts.

Q. Then you go to October 22nd?

A. October 22nd. Thirty and ten-twelfths of a dozen rompers, gym rompers, you know, those gym rompers, if you ever saw the girls in high school, the way they dance around, so this is rompers. It is made out of cotton goods.

Q. October 23rd.

A. Twenty and one-twelfth of a dozen skirts. October 23rd again. Thirty-three and five-twelfths of a dozen pleated skirts. No plaid skirts. October 25th, twenty-four and ten-twelfths of a dozen plaid skirts. This was shipped before without being charged so it says not completed.

Q. October 26th.

A. Sixteen and one-twelfth of a dozen pleated skirts.

Q. October 29th.

A. Eight and nine-twelfths of a dozen rompers.

Q. October 30th.

A. Sixty-six dozen jackets, children's jackets.

Q. What is the following day?

A. October 31st. Ski pants.

Q. How many?

A. Fifteen and five-twelfths of a dozen ski pants.

Q. Just a couple of more pages, then we will be finished. Now November 2nd.

A. November 2nd, ten dozen jackets; five and one-twelfth of a dozen jackets.

Q. Now, what is that?

A. That is November 8th. Plaid detachable skirts, eighteen and three-fourths of a dozen. November 18, thirty-nine and four-twelfths of a dozen skirts. November 10th, seventeen and ten-twelfths of a dozen corduroy ski pants.

MR. GIROFSKY:

What date is that?

THE WITNESS:

The 10th. Ten and four-twelfths of a dozen jackets. Ten and four-twelfths of a dozen ski pants.

BY MR. MOSCOVITZ:

Q. Now, November 14th.

A. Sixteen dozen skirts. November 14th again. Seven and eight twelfths of a dozen skirts. Nine and seven-twelfths of a dozen skirts.

Q. Just read November 16th.

A. November 16th, four and a half dozen samples. Forty dozen ski pants. Seven dozen pleated skirts. Four and two-twelfths of a dozen jackets.

Q. Isn't that fifty jackets?

A. That makes four and two-twelfths of a dozen.

Q. I am sorry. Now, that is all right. While you are resting, Mr. Fainblatt, would you mind going over to about September 1st, 1935?

A. Seventy-two and five-twelfths of a dozen.

Q. Dozens?

A. Yes. Eleven and eight-twelfths of a dozen. Forty-seven and ten-twelfths of a dozen. Fifty dozen. Eighteen dozen, and nine-twelfths.

Q. September 2nd?

A. Seventeen dozen, sixteen and two-twelfths of a dozen, nineteen and four-twelfths of a dozen. Nine and eight-twelfth dozens.

Q. September 3rd?

A. Ten and ten-twelfths dozens. Ten and ten-twelfths dozens. Fourteen and eight-twelfths dozen. Fourteen and eight-twelfths dozen. Fourteen and eight-twelfths dozen.

Q. September 4th. These are all references to 1935?

A. These are all references to 1935. Twenty-five dozen.

MR. GIROFSKY:

What is the date?

MR. MOSCOVITZ:

September 4, 1935.

A. September 5th, twenty-nine dozen, forty-six dozen, nineteen dozen.

Q. September 7th.

A. Seventeen and six-twelfths dozen.

Q. September 9th.

A. Forty-seven and one-twelfth dozen. Twelve and eight-twelfths of a dozen. Twelve and eight-twelfths of a dozen. Two hundred and five and six-twelfths of a dozen.

Q. September 10th.

A. Thirteen and four-twelfths dozen. Thirteen and four-twelfths dozen. Thirteen and four-twelfths dozen.

Q. September 14th.

A. Fifteen and four-twelfths dozen. Fifteen and

four-twelfths dozen. Fifteen and four-twelfths dozen.

Q. September 16th.

A. Thirty-eight and four-twelfths dozen.

Q. September 18th.

A. Sixteen and four-twelfths dozen. Sixteen and four-twelfths dozen. Sixteen and four-twelfths dozen. Thirty-eight and nine-twelfths dozen. Thirty-two dozen.

Q. September 20th.

A. Seventy-two and four-twelfths; twenty-one and six-twelfths; that is all on that day.

Q. September 21.

A. Nine and two-twelfths dozen. Nine and two-twelfths dozen.

Q. September 23rd.

A. Eleven dozen. Twenty-four dozen. Two and five-twelfths of a dozen.

Q. September 24th.

A. Twenty dozen. Fifty and six-twelfths dozen. Twenty-six dozen.

Q. Let's have this straight, would you read that over again for September 24th?

A. Twenty dozen, fifty-seven and six-twelfths dozen and twenty-six dozen.

Q. Now October 1st, 1935.

A. Twenty-one and one-third of a dozen.

Q. Isn't that twenty and a third dozens?

A. I am sorry. Twenty dozens, nineteen dozens and one-sixth. October 1st again, twenty-five and ten-twelfths of a dozen. Twenty-four and two-twelfths of a dozen.

Q. Now, October 2nd.

A. Twenty-two and six-twelfths. Eighty-one and nine-twelfths. Twenty-three and eight-twelfths.

Seventeen and six-twelfths. Sixteen and eight-twelfths. Thirteen and four-twelfths.

Q. October 3rd,

A. Fifty-three dozen. Twenty-one and four-twelfths dozen. Twenty-six and eight-twelfths dozen. ~~Twenty-six dozen.~~

Q. October 4th.

A. Seventeen and one-twelfth dozen. Seventeen and one-twelfth dozen. Thirty-two and six-twelfths dozen.

Q. October 10th.

A. Thirty dozen. Thirty dozen. Thirty dozen.

Q. October 14th.

A. Twenty-five dozen. Twenty-seven and ten-twelfths dozen. Sixty dozens.

Q. Mr. Fainblatt, did you bring with you records which would show when new employees were taken on by you after the strike?

A. I did not. Maybe it is in the book.

Q. Do you know approximately how long after the strike started that you had the same number of workers employed as you did the day of the strike?

A. At that time I didn't have the amount of employees. My memory—to my best recollection, I didn't have the amount of employees until after New Years.

Q. Until after January, 1936?

A. Yes.

Q. And it was then that you had—

A. Then I started to put in people to work, more people.

Q. Yes. Well, was it then that you had the same number of workers as you had the day of the strike?

A. After New Years we started.

Q. After the New Year. Now, you say you have

approximately how many working?

A. Over sixty surely.

Q. And at the start of the new year, you had the same number as you had the day of the strike?

A. I didn't check.

Q. Now, between September 18, 1935, and the new year, you did take on new employees didn't you?

A. I took on some.

Q. You took on some, and was it over a period of days, or did you take them all on at one time?

A. No, over a period of time.

Q. Can you tell me approximately how many?

A. Impossible for me to tell you.

MR. MOSCOVITZ:

That is all.

MR. GIROFSKY:

If Your Honor please, I wish to state that the respondents' rights are not being waived here by reason of any cross examination that I may subject him to.

TRIAL EXAMINER GATES:

Certainly.

Cross Examination

BY MR. GIROFSKY:

Q. Mr. Fainblatt, you took some new people in after the strike?

A. Yes.

Q. And among those persons that you took back, some of those persons had gone out at the time of the strike; is that right?

A. No.

Q. Didn't you know a Miss Potter?

A. She did not go on strike.

Q. Didn't she leave at the time of the strike?

A. She didn't report to work for some time and then she came back to me.

Q. And did you advertise for these girls.

A. No.

Q. Have you ever refused re-instatement or re-employment to any of the girls who did leave?

A. No.

Q. And these girls who did leave—have any of these girls who did leave on September 18th applied for employment? *

A. No.

Q. Do you know Elizabeth Scatcher?

A. If I see her face I will know her.

MR. GIROFSKY:

Is Elizabeth Scatcher in Court? If so, stand up.

(One of the spectators arises.)

BY MR. GIROFSKY:

Q. Do you know that girl?

A. I know her face.

Q. Did you ever discharge her from work?

A. No, sir.

Q. Do you know Angelina Matteis?

(One of the spectators stands up.)

A. No, sir.

BY MR. GIROFSKY:

Q. You never discharged her from employment, did you?

A. No.

Q. Do you know Lorraine Heitz? You know her?

A. If I will look at her I will know her..

Q. Mary Gecik?

(Spectator stands up).

A. They are both alike.

Q. Did you ever discharge her?

A. No. I believe she went out on strike.

Q. Did you discharge Fay Katz?

A. No.

Q. And Ethel Rice?

A. No.

Q. Anna Santora?

A. No, she worked till the last minute. She went down with the girls. This is on my list there, you can see.

Q. And you say they went down of their own accord; is that right?

A. Yes.

Q. Have they ever applied for re-instatement?

A. No.

Q. Have you ever refused to re-instate any of these girls?

A. No.

Q. Did you ever tell any of these girls named by me that they could not work at your plant because of any organization affiliations?

A. No.

Q. Your answer is no?

A. No.

Q. Now you don't buy the raw materials that are received at your plant; do you?

A. No.

Q. And you don't ship the manufactured garments out, do you?

A. No.

Q. You do press the garments?

A. Yes.

Q. And do you deliver the package to the Lee

Sportswear representative on the premises in Somerville, don't you?

A. Yes.

Q. And Lee Sportswear then disposes of the finished garments?

A. I suppose so. That is what they do, that is their business.

Q. Now, who pays the carrier for taking these finished garments?

A. I don't know.

Q. Do you pay?

A. No, I don't.

Q. Do you direct the carrier to take these goods anywhere?

A. No.

Q. That is all taken care of by the Lee Sportswear?

A. By the jobber.

Q. And as I take it then from your testimony here, you are only engaged in manufacturing sports garments in Somerville; is that right?

A. That is all we do, nothing else.

Q. And you have no salesmen?

A. No.

Q. To sell garments?

A. I have got no garments for sale.

Q. Who pays for this manufacturing process?

A. What do you mean?

Q. Who pays you for manufacturing?

A. Lee Sportswear.

Q. I observe in the records here that you were reading to Mr. Moscovitz some shipments were made to Lee Sportswear, and on a few occasions some to Montgomery Ward, is that right?

A. Yes.

MR. MOSCOVITZ:

Montgomery Ward where?

THE WITNESS:

It says there, I suppose.

BY MR. GIROFSKY:

Q. On all these shipments recorded in here, who pays for the manufacturing of these garments?

A. Lee Sportswear. You see, it is charged to Lee Sportswear.

Q. Who paid for all the garments you accounted for to Mr. Moscovitz during the direct examination?

A. I still don't understand you.

Q. Who paid you for making these garments that you numbered?

A. Lee Sportswear.

Q. Did you ever pay Lee Sportswear for any raw materials?

A. No, sir.

Q. Did you ever buy raw materials from them?

A. No, sir.

Q. They were shipped then by the Lee Sportswear?

A. Yes.

Q. Who paid for the shipping of the goods?

A. Lee Sportswear.

Q. You mentioned something about insurance in answer to Mr. Moscovitz' question, compensation insurance. You are referring to compensation insurance as required, aren't you, under the laws of the State of New Jersey; is that right?

A. Yes.

Q. You don't carry any federal compensation insurance?

A. I carry—I carry only what we call compensation.

Q. For the New Jersey Compensation Law, is that right?

A. Yes.

Q. Now, is there a Lee representative on your premises?

A. Yes.

Q. And he is the one you turn the goods over to after you have completed your job?

A. Yes.

Q. And I believe you testified that that was Sol Fainblatt?

A. Yes.

Q. Is he on your payroll?

A. No.

Q. And what does he do with the goods when you turn them over to him? Is that immaterial to you?

A. Positively, yes, sure.

Q. Now, Mr. Fainblatt, is this your book of accounts for the Somerset Manufacturing Company?

A. Yes.

Q. Now, this book shows all receipts and disbursements, is that right?

A. Yes.

Q. And I note on page number two, which is the first page of entries, income from Lee Sportswear. Is that right?

A. One thousand dollars, you mean.

Q. Money received?

A. Sure.

Q. Do you have any entries in this book to indicate that you received money from anyone other than the Lee Sportswear?

A. No, no, no.

Q. And what does that money represent, the pur-

chase or rather payment for your services in manufacturing garments; is that right?

A. This here money represents the labor, or I will call that labor, for manufacturing garments. That is what it represents.

Q. And there are no other accounts entered into this book to indicate that you received any other money from any other concern than Lee Sportswear?

A. No, sir.

Q. Have you any financial interest in Lee Sportswear?

A. No, sir.

Q. Have you ever had any financial interest in Lee Sportswear?

A. No, sir.

Q. Going back for a moment, do you have any other books of accounts of the Somerset Manufacturing Company showing receipts and disbursements?

A. No, sir, they are all there.

MR. MOSCOVITZ:

Mr. Examiner, counsel for respondent and I have agreed upon a stipulation which I shall now state for the record. If I am wrong, as I go along, in my recital, I will stand corrected.

It is agreed and stipulated that the Somerville Manufacturing Company, also known as the Somerset Manufacturing Company, manufacturers raw material for the exclusive account of the Lee Sportswear Company, New York City.

MR. GIROFSKY:

Manufactures and converts raw materials of the Lee Sportswear Company.

MR. MOSCOVITZ:

Converts raw materials of the Lee Sportswear Company into a finished product for the exclusive account of the Lee Sportswear Company, in New York City. Correct so far?

. It is further stipulated and agreed that the Lee Sportswear Company, New York City, sells and distributes for its own account the entire aforementioned converted manufactured products throughout the United States.

MR. WHARTON:

The reference above to the Somerset Manufacturing Company, formerly the Somerville Manufacturing Company, is corrected to read: The Somerset Manufacturing Company. The Somerville Manufacturing Company has ceased to do business on or about February 15, 1935, prior to which time the said Somerville Manufacturing Company furnished manufactured goods for the sole and exclusive account of the Lee Sportswear Company in the same manner as the Somerset Manufacturing Company is furnishing the same at the present time.

BY MR. GIROFSKY:

Q. Mr. Fainblatt, these shipments listed in the book pertaining to accounts other than Lee Sportswear, as for instance, the name of Montgomery Ward, as a shipment to that concern, they were made and charged to the account of the Lee Sportswear Company, is that right?

A. Yes.

Q. And those shipments were made for Lee Sportswear?

A. Yes.

Q. And the shipment was made through the representative of the Lee Sportswear Company, who was present on your premises at Somerville?

A. Yes.

Q. Is that right?

A. Yes.

Q. And you did not receive any money from those accounts?

MR. MOSCOVITZ:

Did he or did he not?

MR. GIROFSKY:

This is cross examination.

BY MR. GIROFSKY:

Q. You did not receive any money from Montgomery Ward, did you?

A. No.

Q. The only money you ever received was from Lee Sportswear?

A. Yes.

Q. And that for the sole purpose of payment for manufacturing this material into garments?

A. That is right.

Q. And going back, you stated that you had no financial interest in Lee Sportswear? Is that right?

A. Yes, that is right.

Q. You were never a partner in Lee Sportswear Company, were you?

A. No.

Q. Does the Somerville and Somerset Manufacturing Company—they never paid any moneys to Lee Sportswear, did they?

A. No, sir.

Q. In the way of dividends?

A. No, sir.

Q. Or returns?

A. No, sir.

Q. And the money you used in establishing this plant is solely your money, is that right?

A. Yes.

Q. Money raised by you?

A. Exactly.

Q. Mr. Fainblatt, the day these girls walked out, you testified September 18th, 1935, there were more girls remaining in the plant and continuing on in their work, than there were who left?

A. Yes.

Q. Is that right?

A. Yes.

Cross Examination

BY TRIAL EXAMINER GATES:

Q. Just to clear up my own mind, Mr. Fainblatt, is your relationship with Lee Sportswear—

A. Yes.

Q. Similar to the usual jobber and contractor relationship? Is there anything unusual about your relationship?

A. The only unusual thing is, whereas they are not supplying other contractors with work, they will supply me with work. That is the relationship between father and children.

Q. No other relationship?

A. Positively no other, Mr. Examiner.

Q. Do you know how Mr. Sol Fainblatt spends his time?

A. Yes.

Q. Just answer the question.

A. He goes in to New York in the morning and gets his orders, comes back about two o'clock in the afternoon, and he ships his goods out.

Q. He takes charge of all goods?

A. All goods which I manufacture. In fact, they send in some goods for an order.

Q. Then spends the rest of the afternoon there?

A. Yes, spends all the spare time that he can.

Q. I am a little bit uncertain about these shipments that come in direct from mills. I believe you testified that there were some shipments that came to you direct from mills.

A. Lee Sportswear is saving the time this way, that it had to go to New York, then it has to be shipped back again to me. Whereas it is more advisable to go direct from there where they save probably a day or sometimes two days.

Q. So they order for delivery to you?

A. Yes, they order their goods to be delivered to me.

Q. Does that account for the principal amount of goods that comes to you not already cut?

A. This is the uncut goods.

Q. Yes; do you get any uncut goods from them in New York?

A. Yes.

Q. In addition to this?

A. Yes. I got today uncut goods from New York.

Q. What proportion of the goods that you would make up do you have to cut?

A. Well, there are certain times when most of the goods are cut on the other side, but at certain times, especially lately, we have been cutting every-

thing practically on the other side, but lately they have increased their business and consequently they have not got so much facilities for cutting all their goods and in order to relieve them in cutting it, they send me the raw material and I cut it on my premises, which I am getting paid for.

Q. Is the proportion that you have to cut—does the proportion that you have to cut vary as to the production that you are manufacturing? That is, does it vary with winter or summer goods or particular lines?

A. The winter goods practically, we didn't do no cutting to speak of, but on the summer goods it is already different entirely. We are doing today the most cutting in our premises, whereas in the fall goods, we didn't.

Q. Do you remember the names of the codes that you operated under?

A. Yes.

Q. What are they?

A. The one code was the skirt code, which was under the twenty-one dollars minimum. We paid our girls piece work, but the price was such—

Q. That was the Skirt and Blouse Code?

A. No, there are two kinds of blouses, children's blouses and women's blouses. The children's blouses was under the thirteen dollar minimum and children's skirts were under the thirteen dollar minimum.

Q. What code was that?

A. It was the thirteen dollar minimum, forty hours, children's wear.

Q. Children's and infants' wear?

A. Yes. The women's skirts, on the other hand, we made women's skirts up to February 15th, when

we were finished. We operated them under the twenty-one dollar minimum. In fact, girls made as much as thirty dollars, but we watched that they had to make twenty-one dollars so as not to infringe upon the law.

Q. Those were the only two?

A. Yes, that is why we had to have two firms, not to conflict.

Re-Direct Examination

BY MR. MOSCOVITZ:

Q. You gave certain testimony this morning, Mr. Fainblatt, that I would like to tie in to my own satisfaction so I could be straight on it. The Lee Sportswear Company in New York is owned as a partnership by your sons and your daughter. Is that correct?

A. Yes.

Q. Your daughter, Marjorie Fainblatt, is also registered as an owner in the County Clerk's office in this county of Somerset, as owner of the Somerset Manufacturing Company?

A. Yes.

Q. Your daughter, Marjorie, also makes up your payrolls for you?

A. Yes.

Q. Do you pay her for doing that?

A. Yes.

Q. On the basis of a weekly salary?

A. Yes, yes, sure.

Q. The representative who is on your property for the Lee Sportswear Company, according to your testimony, is paid by the Lee Sportswear Company?

A. Yes.

Q. Is he your son?

A. Yes.

Q. And you were previously associated in a supervisory capacity with Lee Sportswear?

A. Yes, before I went into business.

Q. Before you came to Somerville?

A. Yes.

Q. The space that is used by your son as representative of Lee Sportswear in your plant is paid for by you. Is that not so?

A. By me, it is my property.

Q. Was this representative of Lee Sportswear in Somerville before the strike?

A. Yes.

Q. He was?

A. Yes, sure.

Q. How long has he been here as a representative of the company?

A. Several months.

Q. Before the strike?

A. He was before the strike several months.

Q. You are sure he didn't come in after the strike?

A. No, sir.

Q. Does Lee Sportswear Company owe you any money?

A. No, sir, they pay in advance.

Q. They pay in advance?

A. I owe them money.

Q. Are you sure that none of the installations of machinery in your plant were paid for by Lee Sportswear?

A. They were paid by Benjamin Fainblatt.

Q. Does Benjamin Fainblatt operating in Somerville Manufacturing Company keep his financial

account separate from the financial account of the Lee Sportswear Company?

A. Positively.

Q. You say that the people referred to by Mr. Girofsky in his cross examination of you were not discharged?

A. No, sir.

Q. What were they?

A. What were they?

Q. What did happen that they left?

A. Well, you know in our line—

Q. Were they laid off or discharged or what?

A. They were just what you call temporarily laid off.

Q. Is your answer responsive generally to all the names that Mr. Girofsky gave you?

A. Yes, positively.

Q. What is your explanation of what happened at that time?

A. I don't understand that question.

Q. Insofar as the termination of their employment is concerned, were they discharged?

A. No, they were not.

Q. Were they laid off?

A. They were laid off until we get work, what you call temporary, what you call.

MR. GIROFSKY:

You are speaking now of the six girls whose names appear in the complaint?

MR. MOSCOVITZ:

Yes.

BY MR. MOSCOVITZ:

Q. You say they were temporarily laid off. That is the position you take?

A. Yes.

Q. For what reason?

A. For lack of employment—lack of work rather.

Q. Lack of work?

A. That's it.

Q. As I recall from your testimony, there is a statement by you that you never told the girls that they couldn't work for you because they belonged to the Union?

A. That is certainly that way, yes.

Q. And that these girls never applied to you for re-instatement?

A. Positively they did not.

Q. Yes. Did you ever confer with a representative of these girls for purposes of re-instatement?

MR. GIROFSKY:

If Your Honor please, there is no testimony in this case to indicate that the girls had a representative, and assuming that they might have had a representative, that any representative was properly delegated in pursuant to the terms of the Act to act for these girls. I ask that this question be ruled out.

TRIAL EXAMINER GATES:

I think the question is pertinent, although you are correct in what you say.

MR. GIROFSKY:

There is no one indicated to the witness as to who that representative is.

MR. MOSCOVITZ:

I will indicate it.

BY MR. MOSCOVITZ:

Q. Did you ever confer with Mr. Posner, who is alleged to have been at that time the representative of these girls?

MR. GIROFSKY:

And I object to this question. This is re-direct examination, if Your Honor please. Counsel has had an opportunity to take up all these matters on direct. Now, he is laying the foundation here for neutralizing the testimony that his witness has already given.

MR. MOSCOVITZ:

Of course, on direct examination I did not touch the question of Unions as such, nor the matter of re-instatement of these girls. On cross examination Mr. Girofsky raised the question by asking Mr. Fainblatt whether or not the Union question was involved in the laying off or discharge of these girls and whether they made any application for re-instatement, so it seems to me quite proper to take it up now.

TRIAL EXAMINER GATES:

The question is pertinent to the issues involved here, and I think Mr. Fainblatt may answer.

MR. GIROFSKY:

I take an exception.

BY MR. MOSCOVITZ:

Q. Did you ever confer with Mr. Posner regarding the return of these girls.

A. No.

Q. After these girls went out on strike, did you ever meet with Mr. Posner for the purpose of settling the dispute?

A. Mr. Posner did meet with us.

Q. Did Mr. Posner tell you he represented these girls for the purpose of collective bargaining?

MR. GIROFSKY:

I object to what Mr. Posner told him, as far

as these girls are concerned, or his representative capacity. It is a self-serving declaration.

TRIAL EXAMINER GATES:

Certainly it is self-serving, but you have to make some statement as to it.

MR. GIROFSKY:

Mr. Posner is here This witness is Mr. Moscovitz' own witness. He is affecting the credibility of his own witness. If he wants to stand on the record that way, he may.

MR. MOSCOVITZ:

I am going after further facts. I am not affecting his credibility.

MR. GIROFSKY:

There is a proper way of going after those facts.

TRIAL EXAMINER GATES:

I think the question may be answered, although I think that the general position that you are taking is correct.

MR. MOSCOVITZ:

Then I will withdraw the question.

BY MR. MOSCOVITZ:

Q. You say you did confer with Mr. Posner; is that right?

A. Yes, we did.

Q. And the question of the re-instatement of these girls was raised, wasn't it?

A. Not exactly.

Q. Well, what do you mean, not exactly?

A. If I remember well, we happen to have a little meeting.

Q. Yes. But what was the question brought up

Was the question of the re-instatement of these girls involved?

A. No, it was not.

Q. Was the question of the settlement of the dispute, the strike, involved?

A. Yes.

Q. And wasn't it part of that settlement, the taking back as a group, of these girls who went out on strike?

A. No, sir.

Q. And—

A. If I remember correctly, it was not.

Q. To get back to the girls who went out on strike, it was not involved in the settlement of this dispute?

A. It was not, to my recollection. It was not mentioned that he wanted me to take the girls back, to my best recollection.

Q. Do you mean to convey to me the understanding that the strike was to be settled without these girls being taken back?

A. I don't remember correctly what the conversation was and what the argument was. As I said before, I don't remember.

Q. Did you tell Mr. Posner that you would not enter into an agreement with the Union?

A. I don't remember that.

Q. Did you tell Mr. Posner that you would never recognize a Union for collective bargaining?

A. I don't remember that.

Q. Did you tell Mr. Posner that you would spend your last dime and deprive yourself of your business before you would recognize a Union for purpose of collective bargaining as representative of your girls?

A. I do remember—I did say that in general, that before I will have an outsider running my business, I will get out of it and I will call it quits.

Q. That you would not recognize the Union?

A. Union or anybody else, that I couldn't run my own business without outside interference; I am out of it. I am through.

Q. So it is clear, isn't it, that so far as the Union is concerned—

A. Union or association or organization, or fraternity, I am not—

Q. You will not deal with them?

A. I will not allow an outsider to run my business.

Q. You will not deal with them?

A. I will not let an outsider run my business.

Q. You will not deal with them?

A. I will not let an outsider run my business.

MR. GIROFSKY:

I insist on Mr. Moscovitz making a proper examination of his witness. There is no need for him arguing with him. The answer has been given.

TRIAL EXAMINER GATES:

I don't think that any of the answers have been quite responsive on this one question.

Will you repeat the question, please, Miss Sills, and will the witness please answer directly?

(Question read.)

BY MR. MOSCOVITZ:

Q. The question is you will not deal with the Union as representative of your employees—yes or no?

MR. GIROFSKY:

I object to this question. It is not a question of what Mr. Fainblatt will do now, it is a question of what he would have done at the time of the strike or prior to the strike.

MR. MOSCOVITZ:

We will make it back there then.

BY MR. MOSCOVITZ:

Q. You would not then deal with the Union as representative of the girls for purposes of collective bargaining; is that right?

MR. GIROFSKY:

There is no testimony here that the Union is representative of the girls. It is a conclusion in Mr. Moscovitz' own mind.

MR. MOSCOVITZ:

You lose sight of the fact that there were questions preceding this one where Mr. Fainblatt said he did meet with Mr. Posner. All I want to know is whether or not at that time it was his position that he would not deal with Mr. Posner as a union representative of these girls. It is very simple for him to say yes or no.

MR. GIROFSKY:

What girls?

MR. MOSCOVITZ:

Well, let's not be facetious.

MR. GIROFSKY:

I think it is material to this issue that Mr. Moscovitz state and prove that who among the girls Mr. Posner and the Union represented.

TRIAL EXAMINER GATES:

I agree entirely. Certainly he would have to before the proceeding is over, but I don't think

it is necessary that that proof be put in before he answers the question.

MR. MOSCOVITZ:

Didn't you bring the mayor of this town into your factory and have him face them, and didn't he tell them they did not have to belong to a Union?

A. I did not.

MR. GIROFSKY:

I object to this. What materiality has the mayor to this? Mr. Moscovitz seems to be floundering here, jumping from one thing to another.

TRIAL EXAMINER GATES:

Answer the question.

A. I said I did not.

BY MR. MOSCOVITZ:

Q. Didn't you bring the sheriff of this county in before they went out on strike and have him say they need not belong to a Union?

A. He did not. I did not.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Exception.

TRIAL EXAMINER GATES:

You may have an exception.

BY MR. MOSCOVITZ:

Q. How about the chief of police?

MR. GIROFSKY:

I object to that.

MR. MOSCOVITZ:

I withdraw that.

BY MR. MOSCOVITZ:

Q. Didn't you bring Mr. Hawley in before the

girls went out on strike and didn't he say at that time—

MR. GIROFSKY:

I object. Just a moment.

MR. MOSCOVITZ:

I didn't finish my question.

BY MR. MOSCOVITZ:

Q. And didn't he at that time say that the girls need not belong to the Union?

MR. GIROFSKY:

I object. This man is Mr. Moscovitz' own witness and these questions are leading questions, and they also tend to affect the credibility of this witness. And I want to ask for the record whether Mr. Moscovitz is trying to impeach the testimony or neutralize the testimony of his own witness.

MR. MOSCOVITZ:

Of course, I understand we are not bound by legal rules of evidence in this proceeding. I want to bring out the facts.

MR. GIROFSKY:

Then, this is not a court?

MR. MOSCOVITZ:

The question is before the Examiner.

MR. GIROFSKY:

Anything goes I take it.

MR. MOSCOVITZ:

It seems so in Somerville.

MR. GIROFSKY:

Also before the National Labor Relations Board.

TRIAL EXAMINER GATES:

What is the question?

(Question read to the witness.)

A. He did not say it.

BY MR. MOSCOVITZ:

Q. Before the girls went out on strike, did the Mayor meet with them in your presence, in your plant?

A. Yes.

Q. Before the girls went out on strike did the sheriff of this county meet with you and the girls in your plant?

A. Yes.

Q. Before the girls went out on strike did Mr. Hawley of this city meet with the girls in your plant?

A. Not at that time, no.

Q. Did he at any time?

A. Yes.

Q. All right. On whose invitation?

A. At my invitation.

Q. Did the mayor attend this meeting?

A. At my invitation.

Q. At whose invitation did the sheriff attend this meeting?

A. Mine.

Q. And at whose invitation did Mr. Hawley attend this meeting?

A. At my invitation.

Q. And was a discussion at the time of the meetings in reference to the Union?

A. No, sir.

Q. Was the discussion at the time as to whether or not these girls should join a Union?

A. No, sir.

Q. As to whether or not they should leave the Union?

A. No, sir.

Q. Was the question of Unionism discussed at all?

A. No, sir.

Q. What was the purpose of the meeting?

A. The purpose of the meeting was that we had a little revolution and in place to revolize, we asked them not to make a false step, as I remember well, pardon me, not to make trouble for a peaceful factory which they are making a living there and so forth, but they did not make mention of any Union whatsoever, neither of them.

Q. What revolution? The revolution of the girls joining a union?

A. No, sir.

Q. What revolution?

A. That they are not satisfied with the business there and they are going to go out, they are going to quit work.

MR. GIROFSKY:

Did you mean revolution or a rumor?

A. Rumor, that is what I heard.

BY MR. MOSCOVITZ:

Q. A rumor that the girls were going to go out on strike?

A. Yes.

Q. You heard that?

A. Yes.

Q. Did you know at the time that they belonged to the Union?

A. No, sir.

Q. Did you know it at the time that they met with Mr. Posner?

A. No, sir.

Q. Did you know there was going to be, that

there had been two or three meetings of the Union?

A. No, sir.

Q. Well, how did you know there was going to be a strike?

A. From the girls.

Q. What girls?

A. In the plant.

Q. Then you did know the girls in the plant belonged to the Union?

A. None of them belonged to the Union at that time and I don't think they do today.

Q. How did you know, where did you get your information?

A. I have a right to think, haven't I?

Q. Then you did inquire into the question of whether or not they belonged to a Union?

A. I did not inquire.

Q. But you know—you knew?

A. I knew, yes.

Q. So that when these three gentlemen that we have been referring to met at your invitation with these girls, they met there to discuss the question of the rumored strike?

A. I presume so.

Q. Were you in attendance at the meetings?

A. I was at the meeting, sure, what do you mean, when the gentlemen were addressing them? Sure.

Q. You invited them?

A. I did invite them, yes.

Q. What did the mayor say?

MR. GIROFSKY:

I object to what the mayor said. The mayor's statements at this discussion are immaterial and not binding upon this respondent in this cause. The mayor himself is the best evidence.

MR. MOSCOVITZ:

I will withdraw my question.

BY MR. MOSCOVITZ:

Q. Mr. Fainblatt, before you came to Somerville, you testified that you were associated with Lee Sportswear Company?

A. Yes.

Q. And you also testified that you were associated with them in a supervisory capacity?

A. Yes.

Q. Now, what was that capacity?

A. In the manufacturing field.

Q. But were you boss?

A. No.

Q. Just what were you, an ordinary employee?

A. Yes.

Q. Working on a salary?

A. Yes.

Q. Did you act at all for the firm?

A. Yes.

Q. In what way?

A. Taking care of the department.

Q. What department did you take care of?

A. The manufacturing clothing.

Q. You were in charge of it?

A. Yes.

Q. What would you be called? A foreman, or an ordinary employee?

A. General supervisor.

Q. And that was the only association?

A. Yes.

Q. Did you have any money in the company at that time?

A. No.

Q. Did you ever represent the firm in any proceedings before any arbitration board?

A. Yes.

Q. And did you in those proceedings speak for the firm?

A. Yes.

Q. Under what authority?

A. Under the firm's authority.

Q. Under the firm's authority? They gave you what sort of authority?

A. Full authority.

Q. And were you their representative in all arbitration matters?

A. Yes.

Q. You were to act for them?

A. Yes.

Q. And they would assume as their agent whatever you did?

A. Yes.

TRIAL EXAMINER GATES:

What sort of arbitration did he have reference to?

A. Three years ago we had a factory inside, what we called it, twenty odd people were working in there.

TRIAL EXAMINER GATES:

You mean arbitration matters with the Unions? You ran an inside shop?

THE WITNESS:

Yes.

BY MR. MOSCOVITZ:

Q. You came here in 1934?

A. Yes.

Q. Do you remember the month?

A. August.

Q. And immediately before coming here, were you involved in an arbitration matter in New York?

A. This is the arbitration that you asked me.

Q. Yes. And that was before the Impartial Chairman?

A. Dr. Moskowitz.

Q. What was the question before him at that time?

MR. GIROFSKY:

I object to this question, Your Honor. It is immaterial about these arbitration labor disputes of Lee Sportswear prior to the date that we are concerned with in the proceeding. It was some time before he ever came to Somerville.

TRIAL EXAMINER GATES:

The witness may answer.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. What was the question before the Impartial Chairman?

A. The question was we had been starting to manufacture, or the firm of Lee Sportswear, started to manufacture a line of merchandise whereas those employees were not experienced and consequently they could not see their way clear to manufacture this class of merchandise inside.

Q. That is the Lee Sportswear?

A. Lee Sportswear. I am speaking about that and the representative of those employees insisted upon Lee Sportswear manufacturing this class of merchandise, even under a loss, which it had to go before the arbitrator, whatever you call him, Dr. Moscovitz.

Q. That is the same kind of work you are doing in Somerville today?

A. Yes. This is the goods. And, of course, after a time it was fading out and they gave up their factory.

Q. You were decided against in that case?

A. No, I was not.

Q. Can you tell me what the decision was in that case, if you remember?

MR. GIROFSKY:

I object to this question. It is immaterial what the decision was in any other proceeding. It has no relation whatever.

TRIAL EXAMINER GATES:

I think it assists in giving the general picture.

MR. GIROFSKY:

Exception.

A. The decision was that they could not manufacture under their own supervision this line of work.

Q. The line of work that you are manufacturing here?

A. That they had been manufacturing at that time there.

Q. Prior to this decision—

A. Yes.

Q. By the Impartial Chairman, before whom you appeared for Lee Sportswear, you moved to Somerville, you came to Somerville?

A. They put me in business, they opened a factory for me, they let me open a factory.

Q. Oh, they put you in business?

A. Yes.

Q. Then, after they put you in business in Somerville,

ville, you manufactured the type of thing you were forbidden to manufacture in New York?

A. Yes.

Recross Examination

BY MR. GIROFSKY:

Q. You went into that business with your own capital?

A. Yes.

Q. You assumed all financial obligations and responsibilities in running this business in Somerville?

A. Yes.

Q. And that is solely a manufacturing business, is that right?

A. Yes.

Q. When Mr. Posner came to you, he insisted he wouldn't talk re-employment of these girls, or wages, or hours, or other working conditions unless you first signed a contract making your shop a closed Union shop? Is that right?

A. Yes, that is the truth.

Q. And he would not concern himself about the employment of these six girls named in the complaint, and all others who walked out, unless you had a closed shop contract with him?

A. Exactly.

Q. You stated to Mr. Moscovitz in his examination that Lee Sportswear put you in business. They loaned you money, didn't they?

A. Plenty, too.

Q. And all the equipment in this plant at Somerville, the only plant you operate, is owned by you. Is that right?

A. Yes.

Q. And you, yourself, gave them security for any advances or loans. Is that right?

A. Yes.

Q. What was the form of that security?

A. I gave him a chattel mortgage on my machinery.

Q. And you owed them the money once it was advanced?

A. Yes.

Q. Have you paid any of it back?

A. Very little, so far.

Q. Did you pay any of the money back?

A. Some, not all.

Q. And your obligations then are still open?

A. Yes, still open.

Q. And you worked for Lee Sportswear over in New York on a salary?

A. Yes.

Q. You were not the owner of a plant?

A. No, sir.

Q. You went into business for yourself when they were stopped from manufacturing by themselves?

A. Exactly.

Q. Then you went into business for yourself?

A. That's right.

Q. At Somerville?

A. That's right.

Q. Do you file a personal income tax return?

A. Yes.

Q. Do you include in that personal income tax return your income from manufacturing here?

A. Yes.

Q. And does the Lee Sportswear, to your knowl-

edge, include in their income tax return any income from the Somerville Manufacturing Company?

A. They haven't got no income from the Somerville Manufacturing Company.

Q. And now, Mr. Fainblatt, are you willing to re-employ these girls, if there is no insistence that your shop be a closed Union shop?

A. I will answer that question in a different way.

Q. Are you willing?

A. I am willing to employ each and every one of them if they come in peacefully.

Q. Have you always been willing to do that?

A. I am always willing to employ any peaceful worker.

Q. Have they ever applied for re-employment?

A. They have never applied since they came out.

BY MR. MOSCOVITZ:

Q. Will you employ these girls if they come in peacefully?

TRIAL EXAMINER GATES:

He has not finished his examination.

MR. MOSCOVITZ:

I thought he said he was finished. I am sorry.

BY MR. GIROFSKY:

Q. You would not insist as a condition of re-employing these girls that the shop be unionized, is that so?

A. I will employ any employee—

MR. MOSCOVITZ:

There is no question before you.

MR. GIROFSKY:

Withdraw the question. That is all.

BY MR. MOSCOVITZ:

Q. Will you re-employ these girls, Mr. Fainblatt,

to whom you have been referring if they come back peacefully?

A. I will employ any peaceful worker who applies for work, if I have room for them.

Q. Then you would take these girls back if they came back peacefully, and you had work for them?

A. As individuals.

Q. But not as a union?

A. Not as a body; I don't speak about unions. I don't know about union business. I know a body.

Q. You mean you will take one but you won't take two?

A. I may take twenty out of them.

Q. If you take twenty, it is a body?

A. As individuals.

Q. Will you take twenty on the same day?

A. No, sir, because I ain't got room for them.

Q. But if you had room for them?

A. I will take twenty one the same day if I had room for them.

Q. But that would be a body?

A. You and this gentleman and this gentleman can come and apply for work and if I have room I will hire you and if I have not got room I won't hire you. I may hire in one day twenty people and the next day not one person.

Q. That is so long as they don't belong to a union?

A. They can belong to any organization they feel like. It is their personal privilege. I have not got anything against any of my employees if they join an organization or association or any kind of fraternity, that is their personal privilege, but if any outsider will come and want to run my business, inside, I will not concede to it.

Q. Do you mean then that you have no objection to their belonging to an association or outside organization so long as it does not become necessary then for you to deal with this organization as the representative of your workers?

A. As long as this organization don't want to run my business.

Q. That is not the question.

A. That is the only answer I can give you.

Q. It seems to me it is clear enough.

A. As long as this organization does not run my business. It is their personal privilege to belong to any organization.

Q. There is no question before you.

(Witness excused.)

TRIAL EXAMINER GATES:

We will recess for five minutes.

After Recess

TRIAL EXAMINER GATES:

Is counsel ready?

HARRY A. POSNER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

BY MR. MOSCOVITZ:

Q. What is your full name?

A. Harry A. Posner.

Q. What is your address?

A. My home address?

Q. Yes.

A. 607 East Second Street, Plainfield, New Jersey.

Q. What is your business?

A. Manager of Local No. 149, International Ladies Garment Workers Union.

Q. Are you a representative of the International Ladies Garment Workers Union?

A. Yes.

Q. What is the Local to which you have just referred?

A. This is a branch of the parent body.

Q. Where is it located?

A. 3 West 16th Street, New York.

Q. As representative of the International, have you had occasion to act in Somerville?

A. I did.

Q. In regard to what company?

A. In regard to the Somerville Manufacturing Company and Somerset Manufacturing Company.

Q. That is the respondent in this case?

A. That's right.

Q. How did you happen to come to Somerville?

A. Well, on or about August 14th—

Q. 1935?

A. 1935—three of the workers of the Somerville Manufacturing Company came to my office—

MR. GIROFSKY:

I object to any conversation this witness might have had with anyone other than the respondent for the purposes of this question.

TRIAL EXAMINER GATES:

Well, I don't think he has testified to any yet, but I would be inclined to let it in.

MR. MOSCOVITZ:

I don't intend that this explanation which Mr. Girofsky anticipates that Mr. Posner will give is to be binding on Mr. Fainblatt. It is simply explanatory on how he came here. I don't know yet what Mr. Posner is going to say.

BY MR. MOSCOVITZ:

Q. You say three girls came to you on August 14th?

A. Yes.

Q. What were their names?

A. Mary Morano, Ethel Rice and Anna Santora.

Q. What did they come to you for?

A. They came to me and asked me if I could put them—

MR. GIROFSKY:

I object to any conversation this witness had with these girls. It is hearsay. It is not in the presence of respondent.

TRIAL EXAMINER GATES:

The witness may answer.

MR. MOSCOVITZ:

It is certainly in the presence of Mr. Posner. I don't expect that this testimony is to be binding upon Mr. Fainblatt. I simply wanted it as an explanation how he came to Somerville.

MR. GIROFSKY:

It is entirely improper. I don't think it is fair for it to go into the record. Your Honor, You have the right to rule on it.

TRIAL EXAMINER GATES:

I have already ruled that it may go in.

BY MR. MOSCOVITZ:

Q. Did you give the names of the girls that came to see you?

A. Yes.

Q. Did they make any request of you?

A. Yes.

Q. What was the request?

A. They requested me to assist them in improving their conditions in the factory there.

Q. Now, as a result of this request, this one conversation, did you then come to Somerville?

A. No, I did not.

Q. What took place then?

A. I was too busy at that time and I told them to go back to the factory and—

MR. GIROFSKY:

I object, Your Honor, for the same reason.

TRIAL EXAMINER GATES:

It can be understood that you are objecting to this whole line of questioning and that the same ruling applies, if you wish.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. Will you proceed?

A. I was too busy at that time to come out to Somerville. I instructed these girls to go back to the shop and speak to the rest of the workers. If they could get enough of the workers interested to attend a meeting, that they should let me know and I would come out and have a meeting with them and find out further details about their conditions in the shop.

Q. Did they do that?

A. Well—

Q. Just yes, or no.

A. Yes they did.

Q. Did they then communicate with you further?

A. They did.

Q. When, do you remember?

A. On the 19th.

MR. GIROFSKY:

I object to all this line of testimony as to any conversations or the conduct of these girls.

BY MR MOSCOVITZ:

Q. Will you answer my question?

A. They communicated with me and I arranged a meeting for the 21st of August in Raritan.

Q. Did you then attend that meeting?

A. I did.

Q. Were the employees of this company there, certain of them?

A. Yes.

Q. That was the first meeting you had with them?

A. Yes.

Q. Do you know how many were there?

A. Approximately twenty-five.

Q. Did any of the employees at that time join your union?

A. Mostly all of them did.

Q. At that time?

A. At that meeting, yes.

Q. And did you have any—

TRIAL EXAMINER GATES:

I would rather counsel be a little more specific.

BY MR. MOSCOVITZ:

Q. Did any of the employees who attended the first meeting make application for membership in

the International Ladies Garment Workers Union?

A. They all did.

Q. Was it an application as such or was there any dues paid, or what was the proceeding?

A. No dues paid at the time. They just filled out the application blanks showing their willingness to become members.

Q. You say that they all did. Do you know approximately how many did?

A. About twenty-two.

Q. And what was your next meeting, if you did have a next meeting?

A. It was on the 28th of August.

Q. What was the attendance at that meeting?

A. About thirty-five.

Q. All employees of the company?

A. All employees of the above mentioned firm.

MR. GIROFSKY:

I object to this. There is no testimony to show that this man is in a position to know whether or not they were employees.

MR. MOSCOVITZ:

We will connect that up.

TRIAL EXAMINER GATES:

He may answer.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. Did you get any additional applications at that time?

A. I did.

Q. How many do you recall?

A. About ten.

Q. Which gave you a membership of approximately how many at that time?

A. Thirty-five.

Q. And did you have any other meetings before the date of the strike?

A. I did.

Q. That is, before September 18th, 1935?

A. Yes.

Q. How many more meetings before the day of the strike?

A. I had one on October 5th, one—

Q. I am talking about before the day of the strike.

A. I had a meeting on the 17th.

Q. Of September?

A. Yes.

Q. Were there any additional applications at that time?

A. Yes.

Q. How many?

A. About forty-three.

Q. Additional or does that make your total forty-three?

A. That makes my total forty-three.

Q. Do you have the application of those who signified their desire to be represented by the International at that time?

A. I have.

Q. With you?

A. Yes.

Q. May I see them?

A. They are in my bag, if you will permit me to get them.

Q. Do you have them now?

A. Yes.

Q. Do you now have before you the applications of those who signified intention to be represented by

you; or by the International before the day of the strike?

A. Yes.

Q. And in whose signatures are these cards?

A. The signatures of the workers, of the applicants.

Q. Are the dates on the cards?

A. Yes.

Q. May I see them? These are the signatures of the applicants?

A. Yes.

MR. MOSCOVITZ:

I offer those in evidence, Your Honor.

MR. GIROFSKY:

I would like to check them before we go any further. Do you wish to proceed momentarily and allow me to check these?

BY MR. MOSCOVITZ:

Q. At first did you discuss with the applicants the question of representation before Mr. Fainblatt for the purposes of collective bargaining?

A. I did.

Q. And when was the first time that you met with Mr. Fainblatt for this purpose?

A. It was about two days after the second meeting. I believe it was the thirtieth of August.

Q. And where did you meet Mr. Fainblatt, or how did you get in touch with him?

A. I called upon Mr. Fainblatt on the premises of his plant.

Q. And did you meet with him?

A. I met with him.

Q. What took place at that time?

A. I told Mr. Fainblatt that I had met with the workers of his shop.

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MR. GIROFSKY:

Is counsel intending to neutralize the testimony of Mr. Fainblatt, his witness? If so, I should like to know in order to further my objection to this question.

MR. MOSCOVITZ:

I am not neutralizing any testimony of Mr. Fainblatt. There is no testimony of Mr. Fainblatt regarding any conversations with Mr. Posner at this time.

MR. GIROFSKY:

Counsel has asked Mr. Fainblatt questions on this matter.

MR. MOSCOVITZ:

I didn't specifically refer to these particular meetings.

TRIAL EXAMINER GATES:

I think we ought to get as much as possible into the record.

MR. MOSCOVITZ:

I have not asked anything yet which seems to me to go to the neutralization of testimony. I would say the objection is a little premature.

TRIAL EXAMINER GATES:

Are you raising an objection to that one question?

MR. GIROFSKY:

I withdraw the objection for the moment.

BY MR. MOSCOVITZ:

Q. What took place at that meeting?

A. I called on Mr. Fainblatt about five thirty in the afternoon and I told him that I have several meetings with his workers and that we had discussed the conditions in the shop and that they had delegated me to present Mr. Fainblatt with demands

improving their conditions, which I did, and Mr. Fainblatt listened to me very carefully and told me that he would take these demands into consideration, and he would let me know in a few days.

Q. Is that all that took place at that meeting?

A. That is all that took place at that time.

Q. You submitted a proposal?

A. I submitted a proposal of demands to him.

Q. As a basis for negotiation?

A. Yes.

Q. Did Mr. Fainblatt get in touch with you thereafter?

A. He did not.

Q. What did you do, if anything? Did you get in touch with Mr. Fainblatt for the second time?

A. I got in touch with Mr. Fainblatt for the second time. I believe it was on the 6th of October—6th of September, rather, and I asked him whether he had any answer for me, and he told me that he will have no dealings with me and he will not have anything to do with a union and that he does not recognize me as the legal representative of the workers.

Q. And then did you call on Mr. Fainblatt?

A. Shortly after that we had another meeting and I reported it.

Q. You mean you and Mr. Fainblatt?

A. No, with the workers.

Q. I see.

A. And I reported to the workers that Mr. Fainblatt has refused to negotiate with us.

Q. Was this before the strike?

A. Yes, before the strike.

Q. Go on.

A. And we discussed that matter and we decided to take the matter to a vote whether they should de-

clare a strike or not and everybody voted in favor of the strike. The strike was set for September 18th at ten o'clock in the morning.

Q. Did you then arrange to meet with Mr. Fainblatt again before the strike?

A. No, I did not.

Q. Did you get in touch with Mr. Fainblatt?

A. I did not.

Q. Then what happened?

A. I accepted his answer as final, that he would have no further negotiations with me and I thought the only thing to do was to have a strike.

Q. Did you discuss this with your members, with your membership?

A. I did.

Q. Were they in touch with your proceedings as you went along?

A. They were.

Q. Did you discuss pro and con the advisability of the various things you were doing?

A. I did. As a matter of fact I tried to advise them against the strike and told them there might be a possibility of getting together with Mr. Fainblatt, but they just wouldn't wait any longer. They said they had been fooled once too often, and they were not going to wait any longer.

MR. GIROFSKY:

I object to these statements. Of course, if counsel wishes to state for the record that these statements are not binding on Mr. Fainblatt—he has already stated that any conversations not in the presence of Mr. Fainblatt are not binding upon Mr. Fainblatt.

MR. MOSCOVITZ:

Oh, my earlier reference was to the manner in

which Mr. Posner came to Somerville. The question has been answered. I did not know you were interposing an objection.

MR. GIROFSKY:

I ask that it be stricken, Your Honor.

TRIAL EXAMINER GATES:

You understand that all this record will have to be sifted and we will let it stand.

MR. GIROFSKY:

Take an exception.

BY MR. MOSCOVITZ:

Q. How many people went out on strike that were members of your union employed by the company on September 18th, Mr. Posner?

A. On the first day of the strike I had forty-three people who all signed up.

Q. What was the date?

A. September 18th.

MR. GIROFSKY:

That is not responsive.

BY MR. MOSCOVITZ:

Q. How many people went out on strike the first day of the strike?

MR. GIROFSKY:

If he knows, Your Honor.

A. About twenty-eight. I can't tell you exactly because I have no records of it.

MR. GIROFSKY:

You have no records?

A. Not with me.

BY MR. MOSCOVITZ:

Q. Approximately how many?

A. About twenty-eight walked out on the day of the strike.

Q. On that day, what was your union membership?

A. Forty-three.

Q. And did any other employees, members of your union, join the strike subsequently?

A. Yes.

Q. How many more?

A. About twelve or thirteen.

Q. And do you know when that was?

A. That was on the day of the strike.

Q. When was it that the additional employees went out on strike?

A. You mean those in addition to those who walked out?

Q. If I understand your testimony correctly, a certain number went out on the day of the strike, twenty some odd?

A. Yes.

Q. Now, in addition to that number, how many went out?

A. About thirteen.

Q. Over what period of days?

A. On the same day.

Q. So how many went out—

A. I want to explain this.

Q. Please do.

A. On the day of the strike, twenty-eight people walked out of the shop. There were about twelve or thirteen who were either discharged prior to the strike or who had quit before the strike themselves, and that made a total of about forty-three on the day of the strike.

Q. So, you are including in the twenty some odd who went out on the day of the strike, those who were discharged before the strike?

A. That's right.

Q. Is that right?

A. That's right.

TRIAL EXAMINER GATES:

You are including in this number of twenty-eight, some who were not at work on that date?

A. No, no. Those twenty-eight came out of the shop. They were working that day but in addition to those twenty-eight, there were thirteen or maybe fifteen who were citizens of the shop.

Q. Let me get this straight. There was a strike September 18th?

A. That's right.

Q. How many Union members went on strike on that day?

A. You mean, how many were on strike that day? Forty-three.

Q. How many physically walked out that day?

A. About twenty-eight.

Q. So that the balance were people who had been discharged before September 18th?

A. That's right.

Q. Now, after the strike, did you confer further with Mr. Fainblatt?

A. Not directly with Mr. Fainblatt but with Mr. Girofsky, his representative.

Q. When was that?

A. That was about ten days or two weeks after the strike was called.

Q. Did you go to see him or call him up?

A. Yes, I went to his office accompanied by one of the strikers.

Q. For what purpose?

A. To see if we can't come to some understanding and settle our dispute in a peaceful way.

BY MR. GIROFSKY:

Q. You swore to a complaint under oath with the National Labor Relations Board as to Fay Katz, didn't you?

A. I did.

Q. And you swore to tell the truth here today?

A. I did.

Q. Now, if your testimony here today stating that Fay Katz was in the employ of the company on September 18th is true or not true—

A. It is true.

MR. MOSCOVITZ:

The witness has not testified.

MR. GIROFSKY:

It has been answered.

BY MR. GIROFSKY:

Q. Then it was untrue, as we understand, when you signed under oath with the National Labor Relations Board, isn't that so?

A. It is not untrue. I considered her to be a member—

MR. GIROFSKY:

Will you instruct the witness to wait until the question is finished, before he answers?

BY MR. GIROFSKY:

Q. Didn't you, showing you a copy of the charge, didn't you say under oath before Evelyn B. Smith, a Notary Public for New Jersey, on October 14th, 1935: "On or about September 12th, 1935, the respondent discharged the following persons:" and you named Fay Katz, and you signed as the manager of the Local Union No. 149 of the International Ladies Garment Workers Union?

A. That's right.

Q. Is that right?

A. Yes.

Q. Then your testimony here today or this affidavit, one or the other, is wrong, isn't that right?

A. No, I cannot see your point. The reason I consider this worker still attached to the shop is because I contend that she was discharged for her activities for trying to help form a union in that shop, and I consider her as one of the workers in that shop.

Q. That is your answer?

A. Yes.

Q. Now, Tessie Barone, was she employed by the respondent companies on September 18, 1935?

A. I don't know much about Tessie Barone as a matter of fact. I don't know these members personally. I only know them by sight. I can't give you the history of each and every one of them. All I know is they were in the employ of the Somerville Manufacturing Company, either on the day of the strike or reasonably prior to the day of the strike.

Q. What is reasonably prior to the day of the strike?

A. Three or four or five weeks.

Q. And if it is five weeks and one day, is that reasonable?

A. Yes, it would be reasonable.

Q. And suppose it would be six weeks, would that be reasonable?

A. It would depend on the circumstances.

Q. What circumstances?

A. If you will permit me to explain, I will give you my version of it. If an employee was forced to quit her job because the employer gave her a cut without consulting her, and without her approval, if by force of economic circumstances she was compelled to leave her job and look for something better

Q. Did you confer with Mr. Girofsky?

A. I did.

Q. Was Mr. Girofsky acting as representative of the company at that time?

A. He was.

Q. Was the matter adjusted?

A. It was not.

Q. And after that did you get in touch with Mr. Fainblatt?

A. No, I didn't speak to Mr. Fainblatt.

Q. That severed further negotiations?

A. That severed further negotiations.

Q. The matter was then submitted to the National Labor Relations Board in a formal charge?

A. That's right.

Q. That is all.

Cross Examination

BY MR. GIROFSKY:

Q. When was it you came to my office, Mr. Posner?

A. I believe it was ten days or two weeks after the strike was called.

Q. Did I invite you to my office?

A. No, you did not.

Q. Who were with you?

A. Mr. Frank Ross.

Q. Ross was not in the employ of Mr. Fainblatt, Somerville or Somerset Manufacturing Company on September 18th, 1935, was he?

A. No, he was not working at that time.

Q. He had not been working for many weeks prior to that time, isn't that so?

A. That's right.

Q. In fact, he was completely out of the employ of the two companies?

A. He was.

Q. He quit voluntarily, of his own accord; is that right?

A. Yes, from what I understand.

Q. And you consider Frank Ross as one of those members in the Union?

A. I do.

Q. And did you consider Frank Ross an employee of the company for the purpose of collective bargaining?

A. I did.

MR. MOSCOVITZ:

Well, Mr. Girofsky—he is not involved.

MR. GIROFSKY:

Why is he not involved? You offered the card.

MR. MOSCOVITZ:

Perfectly agreeable.

BY MR. GIROFSKY:

Q. That cuts your total down from forty-eight to forty-seven, doesn't it?

A. I said forty-three.

Q. It cuts it down from forty-three to forty-two?

A. To forty-two.

Q. Now, are there any other girls—now, was Mary Dentko in the employ of the respondent companies on September 18th, 1935?

A. I couldn't say off hand, I can't remember each one.

MR. MOSCOVITZ:

I object on the ground that that is immaterial.

He can see the cards, I imagine. I offered them. The question is whether or not they were employed on that date or discharged before.

TRIAL EXAMINER GATES:

Are you raising an objection?

MR. MOSCOVITZ:

I object.

BY MR. GIROFSKY:

Q. I don't—you don't know?

A. No. I don't know.

Q. You don't know and you did not know at the time, did you, whether she was employed by the respondent?

A. From what I understand she was one of the employees.

Q. You don't know of your own knowledge?

A. No, I don't know.

Q. How about Sylvia Milano? Was she employed September 18th, 1935?

A. No, she was not.

Q. You don't know how long before September 18th she was working there?

A. Not of my own knowledge.

Q. And yet you considered Mary Denko and Sylvia Milano employees for the purpose of collective bargaining, your representation?

A. Yes, they are—

Q. Theresa Yemma, was she, to your knowledge, in the employ of the respondent companies on September 18th, 1935?

A. I believe she was in the employ up to approximately the 16th of that month, but not up to the 18th.

Q. Do you know?

A. I know she was in the employ.

Q. How do you know?

A. From personal contact with the workers.

Q. Did you see her in the plant?

A. No, I did not.

Q. Did you see her going to and from the plant?

A. I did not.

Q. Then how do you know?

A. From what she told me.

Q. Now, Mayme Ross, was she in the employ of the respondent companies at the date of September 18th?

A. Not on the day of the strike.

Q. She was not?

A. Not on September 18th.

Q. How long before?

A. Four weeks before.

Q. Yet you included her in this group for collective bargaining purposes?

A. I did.

Q. Mary Gecik, was she in the employ of the companies on September 18, 1935?

A. She was not at work on that date, no.

Q. She was not?

A. No.

Q. Was she an employee on that date?

A. She was on August 21st, she was an employee of that shop and that was the day of the first meeting.

Q. But you don't know whether she was on September 18th, do you?

A. If she was,—

Q. You don't know, do you?

A. No, I don't know.

Q. And yet you included her in your group?

A. Yes.

Q. For collective bargaining purposes?

A. Yes.

Q. Fay Katz, was she in the employ of the companies on September 18th, 1935?

A. She was not working on that day, no.

Q. Was she in the employ?

A. I can't say whether she was or not because she had been in the employ up to the time of the strike.

Q. You don't know whether she was in the employ or not?

MR. MOSCOVITZ:

He answered the question that she was not working that day.

BY MR. GIROFSKY:

Q. You don't know whether she was employed or not on that day, do you?

A. No, I know she was not employed on that day.

Q. Well, did she say she was in the employ and off temporarily?

MR. MOSCOVITZ:

Mr. Examiner, if I may object at this point, Mr. Girofsky is going through a list of names, some of whom as he knows are included in the complaint as alleged to have been discharged.

MR. GIROFSKY:

I think this is unfair. I don't want the witness to hear this.

MR. MOSCOVITZ:

I am going to bring these people on the stand, Mr. Girofsky. Those three girls are persons we—

BY MR. GIROFSKY:

Q. You don't know whether Fay Katz was in the employ or not on that day?

A. Not on the day of September 18th, but I do know she was in their employ shortly prior to the time of the strike.

Q. And she was still to your knowledge on the day of the strike in the employ?

A. That's right.

Q. That is your knowledge at the present time?

A. Yes.

Q. Then why did you sign a complaint with the National Labor Relations Board stating that she had been discharged prior to the strike?

A. She was discharged prior to the strike.

Q. That is your answer?

A. Yes.

Q. Why did you tell me a moment ago she was continued in the employ at the time of the strike?

A. She was employed, I said, on the day of the strike.

Q. Do you really know anything at all about her employment with the respondent companies?

A. I know she was in the employ of the Somerville Manufacturing Company for some time and she was discharged shortly before the strike took place.

Q. And you consider Fay Katz in your group for collective bargaining purposes?

A. I do.

Q. She was out of the employ of the company on the day of the strike?

MR. MOSCOVITZ:

We will stipulate—

MR. GIROFSKY:

No, we won't stipulate, anything of the kind.

MR. MOSCOVITZ:

But the Complaint says it. I don't understand this procedure.

MR. GIROFSKY:

How about your proof?

MR. MOSCOVITZ:

We are going to put the party on and have it proved. What else do you want?

I would consider that worker as one of the workers of the shop because she was not discharged by the employer but she was coerced into quitting her job, trying to get something better.

Q. What do you mean by coercion?

A. Well, a person can be coerced.

MR. MOSCOVITZ:

I don't think it is necessary to go into what this gentleman thinks about coercion or what his philosophy is, it is beside the point.

MR. GIROFSKY:

I want to know what his philosophy is. He is giving the membership of these people here based on certain conditions and philosophy and I want to know what they are.

A. It is about time you knew the philosophy of labor organizations, of organized labor.

Q. Answer the question.

A. What is the question?

(Question read).

A. Yes, a worker can be coerced by another person and he can be coerced to commit an act forced by circumstances.

Q. Did you ever coerce any of these girls?

A. I did not.

Q. Now, you don't know of your own knowledge that Tessie Barone was an employee of the company on September 18, do you?

A. I do not know.

Q. And you don't know when she was last an employee of the company?

A. I can give you that information.

Q. Do you know now?

A. Right now I don't know. I have a record of it.

Q. And you consider her a member of that group for collective bargaining?

A. Yes, I do.

Q. And Helen Lee, was she employed by the company on September 18th?

A. I couldn't say whether she was employed on September 18th, but I know she was employed shortly prior to September 18th.

Q. When was she employed prior to September 18th?

A. Probably a week or two before.

Q. Do you know exactly?

A. Not exactly, no.

Q. It might have been two weeks?

A. Yes.

Q. Might have been three weeks?

A. Yes. Why guess at it, I have the information.

Q. I am asking you to answer the question?

A. I don't know of my own knowledge now, but I have the information for you.

Q. It might have been three weeks?

A. Yes.

Q. It might have been four?

A. It might have been six months for that matter.

Q. And yet you considered Helen Lee a member of that group?

A. That's right.

MR. MOSCOVITZ:

I may be wrong, Mr. Examiner, but my recollection is that the names of the employees of the company are in the records and it might simplify matters to check those names against the record.

MR. GIROFSKY:

We have done that.

MR. MOSCOVITZ:

According to the testimony this morning they were of a certain date. If there are some that don't check, it seems to me we ought to limit the examination to that. I remember distinctly Helen Lee's name was brought up.

A. Helen Lee is here. She can testify.

MR. GIROFSKY:

Nobody is asking you.

BY MR. GIROFSKY:

Q. Anna Lee, was she in the employ of the respondent companies on September 18th?

A. Not on September 18th, no.

Q. When was she in the employ prior to the 18th?

A. I know it is either Anna Lee or Helen Lee left the shop two days before the strike was called.

Q. I am speaking now of Anna Lee.

A. I don't know which one it is.

Q. And you considered Anna Lee as a member of the group?

A. Yes.

Q. Mary Kosar or Kosar, Mary?

A. Mary Kosar, I believe, walked out with the rest of the girls on the day of the strike, if I am not mistaken.

Q. Do you know?

A. I don't know.

Q. Do you know if she was in the employ of the companies on the 18th?

A. I don't know.

Q. Do you consider that party as a member?

A. I have a list of all these people who walked out.

Q. Elizabeth Shoaka, was she in the employ of the respondent companies on the 18th?

A. No, she was one of the discharged girls.

Q. When did she last work for the company?

A. Oh, I believe two weeks before September 18th, two or three weeks.

Q. Do you know the exact dates?

A. No, I couldn't tell you off hand.

Q. Was she discharged or laid off?

A. I couldn't tell you whether she was discharged or laid off.

Q. You don't know?

A. No.

Q. And yet you took an oath before the National Labor Relations Board stating that she had been discharged; is that right?

A. Yes.

Q. Yet today you say you don't know if she was discharged?

A. I don't know now but I knew at that time, but if you will let me look at the records.

Q. Does your memory fail you?

A. Sometimes it does.

Q. You considered Elizabeth Shoaka a member of that group? Is that right?

A. Yes.

Q. Angelina Matteis, was she in the employ of the respondent companies on September 18th, 1935?

A. She was not working that day, no.

Q. How long before the date was she working?

A. Several days. I couldn't commit myself, I don't know.

Q. Might have been two weeks?

A. I couldn't say. If you will let me refer to my records I will tell you exactly.

Q. You don't know, yet you considered her a member?

A. I do.

Q. Now, Ethel Rice, was she working on the 18th of September, 1935?

A. Ethel Rice, I believe was discharged.

Q. Yes or no.

A. No, she was not.

Q. She was not. When did she last work for the respondent company?

A. I believe she was discharged on the day of the first meeting, or the day after the first meeting, the 21st or 22nd of August.

Q. Do you know of your own knowledge whether she was discharged or laid off?

A. From her information, she was discharged.

Q. And it is only from her information?

A. From her information.

MR. GIROFSKY:

I ask that the statement that she was discharged be stricken from the record.

MR. MOSCOVITZ:

You continued to press the question and asked for a clarification of the question. I insist that it stand. An attorney can't ask and strike and do whatever he wants.

TRIAL EXAMINER GATES:

It may stand.

BY MR. GIROFSKY:

Q. You consider Ethel Rice a member of that group for collective bargaining purposes?

A. You mean Ethel Rice?

Q. Ethel Rice, yes.

A. Yes.

Q. Now did you know Mary Petrone?

A. Not personally, no.

Q. You didn't?

MR. GIROFSKY:

Is Mary Petrone in court?

A VOICE:

I am here but I am her sister. She is sick in bed.

BY MR. GIROFSKY:

Q. Was Mary Petrone in the employ of the respondent companies on September 18, 1935?

A. If you mean was she working there on that date, she was not working there, but I considered her in the employ because she was a worker in the shop.

Q. When was she last employed there prior to September 18th?

A. Of my own knowledge at the present moment I don't know, but you have a list of all the workers. If I have considered her as one of the workers, I have reason for it. My list shows it.

MR. GIROFSKY:

I ask that that be stricken from the record. It is not responsive, merely volunteered by the witness.

BY MR. GIROFSKY:

Q. Josephine Hurley. Was she employed by the respondent companies on September 18, 1935?

A. No, I don't believe she was.

MR. GIROFSKY:

Is she in court?

VOICES:

She is not here.

BY MR. GIROFSKY:

Q. Do you know when Josephine Hurley was last in the employ of the respondent company?

A. I do not.

Q. It might have been six months preceding September 18, 1935?

A. No, it couldn't possibly have been, or I would not have had the application there.

Q. Why did you say, "couldn't possibly be"?

A. If I felt she was not a member of the shop, I would not accept her.

Q. Did you ever see the employer's books?

A. I did not.

MR. MOSCOVITZ:

Would the employer show him his books?

MR. GIROFSKY:

He never asked for them.

A. The employer refused to show me his books when I first came to the place to see whether the amount of girls' earnings was true, whether it corresponded with his books.

MR. GIROFSKY:

I ask that that be stricken. There is no question pending. It is a volunteered answer.

TRIAL EXAMINER GATES:

It may be stricken.

BY MR. GIROFSKY:

Q. Then you considered Josephine Hurley a member of that group for collective bargaining?

A. Yes.

Q. Was Jean Kolendo in the employ of the company on September 18, 1935?

A. I am not considering her.

Q. Yes or no.

A. She was not.

Q. When was she last in the employ?

A. I don't know, and I don't consider her a member of that shop because I have not seen her since she signed that application blank.

MR. MOSCOVITZ:

We will stipulate that Jean Kolenda is out.

MR. GIROFSKY:

We won't stipulate. It is a matter of testimony.

MR. MOSCOVITZ:

Do you refuse to allow me to strike her from my list?

MR. GIROFSKY:

That brings your total down to—

MR. MOSCOVITZ:

Just a moment. Is Mr. Girofsky interested in getting at the truth of the matter before this Board for the purpose of ascertaining the facts to be submitted to you, or is he simply interested in chastising and embarrassing this individual? If he is not, there is a simple way of settling this matter. Mr. Fainblatt is here. Do you have your employment records with you?

MR. GIROFSKY:

We have gone over this entire situation on other occasions and I have submitted a complete list of names to the National Labor Relations Board's representative in New York, names of those in the employ of this company as our records indicated, those who left and those who walked out, and they come along and say our records are not correct and they have introduced now a group of cards, some forty or more cards and Mr. Moscovitz would attempt to offer these cards and under cross examination it developed that some of these cards are improper, so if we are getting at the truth we are getting at it now and not under direct examination conducted by Mr. Moscovitz.

TRIAL EXAMINER GATES:

You may proceed. Certainly we don't want to let anything slip by here, Mr. Girofsky, but to the extent that it can be done, and recognizing that the witness has testified that he does not know of his own knowledge about who—had never seen them working in the plant and all that, I think there might be some of this that is repetitious and can be eliminated.

MR. GIROFSKY:

He has offered these cards and facts in a pack.

TRIAL EXAMINER GATES:

I understand. Please proceed.

BY MR. GIROFSKY:

Q. Jean Kolenda you say was not considered as an employee, is that right?

A. Yes.

Q. And even though she signed an application on August 28th, 1935, you say she is not properly a member. Is that right? Yes or no.

A. No, she is not a member. For this reason—

Q. Never mind.

MR. MOSCOVITZ:

She is not a member and we stipulate or I will move to strike here from the roll of consideration that name, if Mr. Girofsky does not consent to a stipulation.

BY MR. GIROFSKY:

Q. Mrs. Gitowsky—was she employed on the 18th of September, 1935?

A. She was not working on the 18th of September.

Q. How long before the 18th was she working?

A. My list will say that, I don't know off hand.

Q. She might have been employed a week or two

weeks before?

A. I couldn't say.

Q. Can you say approximately?

A. No, I can't.

Q. You don't know?

A. No.

Q. Yet you considered her a member?

A. Yes, I did.

Q. Vincent Necastro—was he employed on September 18th?

A. He was.

Q. He didn't walk out on the 18th, did he?

A. No, he did not.

Q. And you gave orders to all persons employed or rather affiliated with your Union, to leave on the 18th, didn't you?

A. That's right.

Q. You all agreed?

A. That's right.

Q. And he left the day after that?

A. He came down a week after that.

Q. And yet he signed on September 4th, some fourteen days preceding the strike?

A. Yes.

Q. Magdalene Persano—is she here?

(One of the spectators arose).

Q. Was she employed September 18th?

A. No, she was not.

Q. When was she employed prior to the 18th?

A. I couldn't tell you off hand.

Q. Do you know?

A. I have her listed.

Q. Do you know?

A. I don't know.

Q. You considered her a member of the group for collective bargaining; is that right?

A. Yes.

Q. Where did you get this information that you have on these cards?

A. From the workers themselves.

Q. From the girls?

A. That's right.

Q. It is not of your own knowledge?

A. No.

Q. Not given to you in the presence of Mr. Fainblatt or Marjorie Fainblatt?

A. No.

MR. GIROFSKY:

I object, at this time, Your Honor, to the admission of these cards. They are improper, purely hearsay and prepared at a time when the respondent was not present. For those reasons I object to their admission. They are not binding on respondent.

MR. MOSCOVITZ:

Mr. Girofsky, are they all the cards I gave you? I mean you are objecting to every one of them? Do you want to—

MR. GIROFSKY:

Are you offering them at this time?

MR. MOSCOVITZ:

I will wait until you have finished. Will the Examiner reserve decision on that until I have had an opportunity to make a statement on it?

BY MR. GIROFSKY:

Q. Now, going back, Frances Cicero, has she ever paid her application fees?

A. None of the workers have ever paid an application fee. It is not the custom of our Union.

Q. None of the workers have paid to date any application fee? Is that right?

A. That is right.

Q. Are they considered members?

A. Yes.

Q. By whom, you?

A. Yes.

Q. Do you now have a rule on here—do you—

A. Yes, we do.

Q. Requiring payment before any membership is considered?

A. We do, but only in certain cases.

Q. What is your application fee?

A. It depends upon the nature of the industry, the people that are employed in it, it depends on their earnings.

Q. The more money they make, the higher the fee?

A. It depends on the locality.

Q. Isn't that it?

A. No.

MR. MOSCOVITZ:

I object to the question on the ground of its immateriality. I don't see where the amount that any one pays as received for the joining of the Union has anything to do with the matter before you.

MR. GIROFSKY:

He is testifying that these girls are members. I want to see on cross examination if they are members. It is strange that one can become affiliated in these things for nothing.

MR. MOSCOVITZ:

Some people work for God, you know.

TRIAL EXAMINER GATES:

The last question, the objection is sustained.
BY MR. GIROFSKY:

Q. When were you at my office? *

A. I will say about ten days or two weeks after the strike was called— I can't remember the exact date.

Q. And Frank Ross was with you?

A. Yes.

Q. Do you remember your conversation with me?

A. I do.

Q. Do you remember telling me that you were not considering any negotiations for re-employing these girls as to the matter of wages and hours unless, in the first instance, Mr. Fainblatt would sign an agreement making his shop a closed shop? Do you remember that?

A. I do not.

Q. You deny saying that to me?

A. I do.

Q. Do you remember my secretary being present for a moment in the office?

A. I do.

Q. Did you make that same assertion to Mr. Fainblatt?

A. I did not.

Q. That you would not consider these girls going back to work unless the shop was unionized?

A. I did not say that at all.

Q. Do you remember telling Mr. Moscovitz and Mr. Feller and myself and Mr. Fainblatt at a meeting held in the Post Office that your terms were sixteen dollars minimum, thirty-seven and a half hour week?

A. That's right.

Q. And a closed shop?

A. I said a Union shop—that's right.

Q. A Union shop, meaning that no one but a member of the union could work in that plant?

A. It does not mean that.

Q. What is the Union shop you want to install down here?

A. I want a Union shop where the members belonging to the union shall be treated on an equal basis.

Q. Will you permit non-union members to work alongside of your union members in that shop?

A. I will certainly do that.

Q. Did you ever offer those terms to Mr. Fainblatt?

MR. MOSCOVITZ:

In my presence, he did, Mr. Examiner, as long as I am drawn into this thing.

MR. GIROFSKY:

It is new to me.

MR. MOSCOVITZ:

I was there.

BY MR. GIROFSKY:

Q. You offered a contract to Mr. Fainblatt that night, didn't you?

A. I did.

Q. Have you got a copy of it?

A. I think you have the copy. I left three copies on your desk there.

Q. On my desk where?

A. When we had the conference at the post office.

Q. I had no desk there.

A. We were all sitting around a desk and the copies of the agreement were left there.

Q. You never handed a copy of an agreement to me, did you?

A. I handed out three copies. I don't know who took them.

Q. You say you spoke with Mr. Fainblatt then—the first time was when?

A. The first time I spoke to Mr. Fainblatt I believe was either on or about August 30th.

Q. Are you sure?

A. I am not certain as to the dates, but I am sure it was shortly after the second meeting.

Q. Why were you so certain with respect to your dates under direct examination by Mr. Moscovitz?

MR. MOSCOVITZ:

Mr. Examiner, as I recall, the witness' replies to my questions were approximations.

BY MR. GIROFSKY:

Q. When did you see him again?

A. I didn't see him again. I called him up on the telephone the second time.

Q. You didn't think it was worth while—you were acting in behalf of the girls—to go there personally?

A. I thought it was worth while but I was very busy in my office, and not hearing from Mr. Fainblatt, I called him up to find out what his answer would be.

Q. Do you know Commissioner Moffett of the United States Department of Labor?

A. I do.

Q. Did he ever speak with you?

A. He did.

Q. As a matter of fact, he attempted to conciliate this whole condition down here, didn't he?

A. He did.

Q. He asked you to permit the girls to go back, didn't he?

A. He asked me to permit seven girls to go back and that the others would be absorbed within due time, but under non-union conditions.

Q. When was that?

A. A couple of weeks ago.

Q. Did you permit them to go back?

A. I did not.

Q. Aren't you interested in whether or not these girls have employment?

A. I am.

Q. Then why didn't you let them go back?

A. Because for them to go back under the same conditions that they were working under would be of very little benefit to them.

Q. There are a lot of girls working under those conditions today, aren't there?

A. Because they are working under a little better conditions.

Q. Then why didn't you let these seven girls go back under these better conditions?

A. Because I don't let seven go back and forty girls be out.

Q. Didn't you say they would be absorbed as the amount of work required?

A. That is what he told me.

Q. As the amount of work required?

A. That is something very indefinite.

Q. As a matter of fact, you are not interested in letting these girls go back, unless the shop is unionized.

A. I didn't say that.

Q. Didn't you tell me those very words in my office before Mr. Ross and my secretary?

A. I did not. In the first place, I came to your office to see if we could settle this labor dispute in some peaceful way, and you told me deliberately that Mr. Fainblatt would not talk union or recognize anybody that had any connection with the union.

Q. Then why didn't you permit him to talk to the girls as individuals?

A. Because they wouldn't have any protection unless they have some union or organization to back them up.

Q. And you were the great savior and protector of these girls; is that right?

A. That is right.

MR. MOSCOVITZ:

If there is no objection, I move that Mr. Girofsky's characterization of Mr. Posner be stricken from the record.

MR. GIROFSKY:

There is an answer to it.

TRIAL EXAMINER GATES:

It may stand.

BY MR. GIROFSKY:

Q. When was the first meeting you had with the employees?

A. The 21st of August.

Q. What form of notice did you give?

A. To the employees of the shop, I instructed the three girls who came to my office on the 14th to get as many people of the shop interested in attending a meeting as they could.

Q. Did you instruct them to give notice to all of them?

A. Yes.

Q. You don't know if they did give notice to all of them, do you?

A. No.

Q. Of your own knowledge?

A. No, but I take it for granted.

Q. Don't take anything for granted.

MR. MOSCOVITZ:

What difference does it make?

MR. GIROFSKY:

I want to see what a representative is—how they are selected.

MR. MOSCOVITZ:

Take a day off some time.

MR. GIROFSKY:

I think the Board does too.

• BY MR. GIROFSKY:

Q. How many girls were employed at the plant on September 18th?

A. To my knowledge approximately about fifty-five or fifty-eight.

Q. How many did you say walked out?

A. About twenty-eight.

Q. Twenty-eight. That left thirty girls?

A. According to those figures, it would be so.

Q. That is on the very day of the strike. That is all.

Redirect Examination

BY MR. MOSCOVITZ:

Q. Mr. Posner, in your conference with Mr. Girofsky, the one to which Mr. Girofsky referred, what was discussed?

A. I came up to Mr. Girofsky's office for the purpose of trying to reach some peaceful agreement. I was not anxious to keep the people out, as he stated. I wanted to return them to work as soon as

I possibly could, and I was perfectly willing to sit down and negotiate some sort of an agreement with him whereby we could call it off, and Mr. Girofsky told me Mr. Fainblatt, his client, would absolutely refuse to deal with me as a representative of the workers, and in the light of that, I had nothing else to say, and I just said, "Good-bye."

Q. Did he say he would refuse to have anything to do with the Union, as such?

A. He did.

Q. Refer for a moment to the question that Mr. Girofsky asked you about Mr. Moffett?

A. Yes.

Q. Did you meet with Mr. Moffett?

A. I did.

Q. Did Mr. Moffett submit a proposition for a settlement of this dispute?

A. He told me that Mr. Fainblatt—

MR. MOSCOVITZ:

If Mr. Girofsky would mind stepping away from the witness—

THE WITNESS:

It is all right. He does not get me nervous.

Q. Mr. Moffett told me Mr. Fainblatt would take back seven girls and he would try to absorb the rest of them as times permitted. As that was very indefinite, I told him I could not see my way clear.

Q. Were the balance of the employees who were to be re-absorbed to go back individually?

A. Individually, yes.

Q. Without consideration or having dropped union affiliations?

A. Having dropped union affiliations, yes.

Q. So, for you to have agreed to this proposi-

tion, would have meant you were compromising with the law, wouldn't it, as you understood it?

A. That is right.

(Question and answer read to counsel.)

MR. GIROFSKY:

Thanks, Mr. Moscovitz, for asking that question while I was in conference with an associate. I would like to have had an opportunity to object to that.

MR. MOSCOVITZ:

Am I supposed to watch your maneuvers in order to arrange my examination in accordance with it?

MR. GIROFSKY:

Some times we extend courtesies to counsel.

MR. MOSCOVITZ:

Courtesy is extended also by listening to counsel and not holding conversations on the outside.

MR. GIROFSKY:

I object to it.

MR. MOSCOVITZ:

The question has been answered.

MR. GIROFSKY:

I know that.

BY MR. MOSCOVITZ:

Q. Mr. Posner, did you make up a list of names of employees of the company who went out on strike?

A. I did.

Q. Did you make up a list of names of employees who were alleged to have been discharged before the strike?

A. I did.

Q. How did you make up the list?

A. On the information that I gathered from the applicants themselves.

Q. Did you speak with them individually?

A. I did.

Q. They gave you their stories?

A. They did.

Q. As a result of that you made up a list?

A. That's right.

Q. Do you have such a list? May I see it?

A. I submitted that list to you before.

Q. You have it?

A. You have that list.

Q. Is this the list to which you have just been referring?

MR. MOSCOVITZ:

He is identifying it.

MR. GIROFSKY:

I object to this list. The witness has testified he had made this list out of hearsay from information given him by the girls. The best evidence is the girls themselves.

A. Yes, it is. That explains it all.

MR. GIROFSKY:

I object.

MR. MOSCOVITZ:

I have not offered it yet.

MR. GIROFSKY:

I object to any testimony on it.

MR. MOSCOVITZ:

He raised an objection when he moved away. Does your objection still stand?

MR. GIROFSKY:

If you are offering it, yes, it does, but—

MR. MOSCOVITZ:

You know I am not offering it. I am having it identified.

MR. GIROFSKY:

I object to any testimony pertaining to this list.

MR. MOSCOVITZ:

I submit, Mr. Examiner, that I am entitled to have an exposed exhibit identified.

(Document referred to marked for identification, Board's exhibit No. 2, Witness Posner.)

BY MR. MOSCOVITZ:

Q. Mr. Posner, I show you Board's exhibit No. 2, marked for identification. Is that the list of names to which you have just been referring?

A. This is one list that I submitted. I believe I submitted it to the National Labor Relations Board, but I also gave you a list a little while ago which is practically a repetition of this.

Q. But this is the list you submitted?

A. Yes.

Q. You got that information yourself?

A. I got this from the applicants themselves. That is the only way I could get it.

Q. What does the list show?

A. The workers who walked out, the day of the strike, those discharged prior to the strike, some of them who left of their own accord, and it explains every worker's case separately.

MR. MOSCOVITZ:

I offer it in evidence.

MR. GIROFSKY:

I object. I wish to object to it, Your Honor, as it is predicated on hearsay entirely, and the best evidence is the girls themselves. The wit-

ness' own testimony shows the facts surrounding the compilation here of these names. For those reasons I object.

TRIAL EXAMINER GATES:

You have not had an opportunity to look it over? I would like to have this thing move along and get the most facts that it is possible to agree upon as to what is correct. I will reserve decision on that, in the hopes that counsel for the Board and counsel for respondents may get together with Mr. Moscovitz as to what some of the facts are with relation to those people. We should narrow it down.

MR. GIROFSKY:

I still stand on the objection. Unless Mr. Moscovitz has any objection. We are looking over the list.

MR. MOSCOVITZ:

No further question.

MR. GIROFSKY:

I still have my objection to it.

TRIAL EXAMINER GATES:

You do not wish the witness any further?

MR. MOSCOVITZ:

No.

(Witness excused.)

MARY MORANO, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

BY MR. MOSCOVITZ:

Q. What is your full name?

A. Mrs. Mary Morano.

Q. Where do you live?

A. 57 Gaston Avenue, Raritan, New Jersey.

Q. Were you employed by the Somerset Manufacturing Company?

A. Yes, I was.

Q. How long did you work for the company?

A. Well, I went there to work in November. I worked until February.

Q. What year?

A. 1934.

Q. You worked until February of 1935?

A. Yes.

Q. Then what happened?

A. I became ill and I stayed home, and then I went back in July.

Q. You worked until September?

A. September 18th, the day I walked out on strike.

Q. You went out on strike September 18th, 1935?

A. Yes.

Q. At the time you went out on strike, were you a member of the Union?

A. Yes.

Q. Do you remember when you joined the Union?

A. I do.

Q. What date?

A. I believe it was August 14th or 15th.

Q. 1935?

A. Yes.

Q. And did you attend the Union meetings?

A. Yes, I did.

Q. Did you attend all the Union meetings before the strike?

A. I believe all.

Q. How many of them were there, do you remember?

A. I would say about five or six.

Q. Before the strike?

A. Yes.

Q. And what kind of work were you doing before you were discharged—before you went out on strike?

A. What do you mean, the line of work?

Q. Yes.

A. I was working on heavy ski pants.

Q. And was your job an operator on a machine?

A. Yes.

Q. You operated a machine?

A. Yes.

Q. Did you handle the materials that pass through the plant in process of production?

A. Yes.

Q. What sort of things did you work on? You say ski pants?

A. Yes, ski pants.

Q. What other things?

A. We were making ski pants at the time I went back. That is all I worked on while I was there. Maybe a dozen or two of slacks, I made.

Q. But the great majority of the work was ski pants?

A. Yes.

Q. Piece work or regular salary?

A. Piece work.

Q. Did you get so much a dozen?

A. Yes.

Q. How much were you making a dozen on piece work rates?

MR. GIROFSKY:

I object to this. I don't see where it is material to the issue.

TRIAL EXAMINER GATES:

I will admit it.

MR. GIROFSKY:

Exception.

A. I was getting sixty-three cents a dozen.

Q. Sixty-three cents a dozen?

A. Yes.

Q. And how many hours did you work a week?

A. Forty.

Q. Forty. Were you working regularly?

A. Yes.

Q. Forty hours a week?

A. Yes.

Q. Were you averaging forty or did you just work forty hours a week?

A. I just worked forty hours a week.

Q. Were you employed by this company during the N. R. A. also?

A. Yes.

Q. Did you work then on piece work?

A. Yes.

Q. And what was your work rate at that time?

A. Well, I always made over twenty dollars at that time.

Q. How many hours?

A. Forty hours.

Q. And after the N. R. A., how much did you make?

A. When I came back to work, after I was ill, I came back and I could just about make twelve or thirteen dollars a week.

Q. Same number of hours?

A. Yes, in fact more work.

Q. More work. How do you account for the fact that you worked the same number of hours and yet you made less money after the N. R. A.?

A. I had to work much harder. I could feel the difference when I came home at night.

MR. GIROFSKY:

I object. It is not responsive.

TRIAL EXAMINER GATES:

It may be stricken.

BY MR. MOSCOVITZ:

Q. Did you receive a cut in your piece rate?

A. I did.

Q. What was the cut?

A. As I was saying, when I worked under the N. R. A., I was getting ninety cents a dozen, and when I went back in July, I was getting sixty-three cents a dozen.

Q. I see, you say there was a speed up of operations so you had to turn out more work for the same number of hours?

A. We had to put out so much work, naturally, yes.

Q. Yes. Yet there was a big difference because of the reduction in your rate. Had you ever spoken with any supervisory employee or with Mr. Fainblatt about the union before you went out on strike?

A. Well, I spoke to a few of the girls outside of the shop.

Q. But didn't you ever speak with Mr. Fainblatt?

A. No, I never did.

Q. Or with a foreman, if there was one, about the union?

A. One time, he asked me.

Q. When was that, do you remember?

A. It was about two weeks before I walked out on strike.

Q. Who was that?

A. Mr. Ruby, our foreman.

Q. What did he ask you about it?

MR. GIROFSKY:

I object to any testimony concerning conversations between this witness and Mr. Ruby. It is hearsay.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Exception.

A. He asked me what the Raritan Reds were going to do, were they going to join the union or not, and I told him the girls had a right to do what they please, and the boss had a right to do what he pleased and we had a conversation, but that was all he said to me.

Q. You know then you had a right to join the Union?

A. Yes.

Q. You could join any organization you wanted?

A. Yes.

Q. You felt it was entirely your own affair?

A. Yes.

Q. You also knew, did you, that you could have the Union represent you for purposes of collective bargaining?

A. Yes.

MR. GIROFSKY:

I object, Your Honor, the question is leading and calls for a conclusion.

MR. MOSCOVITZ:

I will withdraw the question.

BY MR. MOSCOVITZ:

Q. Did you know what Mr. Posner's duties were in regard to the affairs of the Union members?

MR. GIROFSKY:

I object to this, Your Honor. It has to be shown that this girl is in a position to know what his duties are.

BY MR. MOSCOVITZ:

Q. You are a member of the Union?

A. Yes.

Q. You did attend Union meetings?

A. Yes.

Q. Was the contract discussed?

A. What do you mean?

Q. Was it discussed that Mr. Posner would take up certain matters with the company?

A. Yes, we asked him to.

MR. GIROFSKY:

I object to any testimony pertaining to conversations between this girl and Mr. Posner. It is hearsay.

TRIAL EXAMINER GATES:

The objection is overruled, but I would caution Mr. Moscovitz to, as far as he can, connect the questions.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. You just stated that you asked Mr. Posner to—what did you ask him to do?

A. Conditions were so bad, we couldn't stand it any longer, because after I got back, it was hard to take care of a sick husband and a baby. I had to give milk to my baby, so when I got there and saw wages were so low, I talked to the girls—

MR. GIROFSKY:

This is not responsive about her husband and baby. I don't see why this should be gone into, on the record, and I ask that it be stricken.

TRIAL EXAMINER GATES:

Objection sustained. The reporter may strike the whole answer, but read the question to the witness again, please.

(Question read.)

A. I will have to tell my story first before I can answer it.

TRIAL EXAMINER GATES:

Try to confine the answer to the question. Conditions of work are one thing and conditions at home are another thing.

A. We decided, three girls, to talk to him. That is how come I have to tell the story before I get to that point.

TRIAL EXAMINER GATES:

Very well, state it your own way.

A. When I came back and saw wages were so bad, I asked the girls, "Have wages been like this all along?" and they said yes, for a long time. And we used to talk among ourselves, and we had sisters

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of our own, so my sister told me, "Why don't you try to organize the shop."

MR. GIROFSKY:

I object to all this kind of thing. It is not necessary for her to say what she said to Mr. Posner.

TRIAL EXAMINER GATES:

It is material.

A. So the girls there—all of them—appointed three of us to go down to Mr. Posner's office.

MR. GIROFSKY:

Is Your Honor permitting this?

TRIAL EXAMINER GATES:

Yes.

MR. GIROFSKY:

I take exception to all of this and ask that it be stricken.

A. So us three girls went down to Mr. Posner's office and we asked him to help us. Of course, he was so busy he couldn't even help us, so we begged him to do it, and he told us to go back to the shop and get the girls to come to a meeting, so we got the girls to come to a meeting. Then he called Mr. Posner up and asked him to speak to us, and he did.

BY MR. MOSCOVITZ:

Q. So you asked Mr. Posner to come down and help you?

A. Yes.

Q. And it was in that manner that the organization started? Is that right?

A. Yes.

Q. Now, going back for a moment again to Mr. Ruby. Did Mr. Ruby make any further reference to the Union in your presence?

A. No.

Q. Before the strike, were you ever called into a meeting attended by Mr. Fainblatt, in which the Union was discussed?

A. Repeat that again.

Q. Before the strike, which was September 18th, did you ever attend a meeting conducted by Mr. Fainblatt in the plant at which time the Union was discussed, organization was discussed?

A. Yes, there was two meetings I was at.

Q. When was the first?

A. I believe it was August 21.

Q. Was this right after you had applied for Mr. Posner's help, or was it before?

A. It was after.

Q. After. And do you remember how soon after?

A. About a week or two, I guess. I couldn't say.

Q. And where was this meeting held that you refer to?

A. Right in the plant.

Q. Do you recall what time of day it was?

A. It was about four-thirty.

Q. Do you recall who was there?

A. Yes.

Q. Who?

A. There was the mayor of Somerville, Mayor Hess, and a Mr. Hawley, that rents the building to Mr. Fainblatt.

Q. From Somerville?

A. Yes.

Q. The younger gentleman?

A. Yes.

Q. Who else?

A. There was another meeting.

Q. Take this one meeting. And was Mr. Fainblatt there?

A. Yes.

Q. Who else was there?

A. That is all.

Q. How many girls?

A. All the girls had to stay, because he closed the doors.

Q. Closed the doors?

A. Yes.

Q. How did he get anyone to go?

A. We were working at our machines and he closed the power off and he told all the girls to circle around, and he introduced us to these two men.

Q. Whom did he introduce first?

A. Mayor Hess.

Q. What did Mr. Fainblatt say?

A. He just said he was the mayor and he had something to say to us.

Q. Did the mayor then speak?

A. Yes.

Q. Do you recall what the mayor said?

A. Yes.

MR. GIROFSKY:

I object, Your Honor, pure hearsay.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. Do you recall what the mayor had to say?

A. I remember part of it.

Q. Tell us in your own words what took place.

A. He told us.

MR. GIROFSKY:

I object to this witness telling what the mayor

had to say unless he can tell us what he said entirely, but not part.

A. I can remember some exact words.

TRIAL EXAMINER GATES:

She can go ahead and tell us.

MR. GIROFSKY:

Objection.

A. He told us to stick to our boss because that is where our bread and butter was, and that we should have no connection with the Union, that our boss was against the Union, that if we walked out on strike, we would be on relief and it was terrible to be on relief, and he told us to bring our troubles to the boss.

Q. Did he advise you to stay away from the Union?

A. Yes.

Q. Was there any other similar meeting?

A. Then Mr. Hawley spoke after that.

Q. The same day?

A. Yes.

Q. Was he there too?

A. Yes.

Q. Who introduced Mr. Hawley?

A. Mr. Fainblatt.

Q. What did Mr. Fainblatt say about Mr. Hawley?

A. He just introduced us to him, that is all.

Q. What did Mr. Hawley have to say?

A. He told us he was in some shipping concern and he was making one hundred and fifty dollars a week, that was a Union shop.

MR. GIROFSKY:

I object to this, Your Honor, what Mr. Hawley had to say, it is pure hearsay.

A. Yes, he told us we shouldn't join the Union because he wouldn't sign.

Q. Was that after the meeting?

A. Yes.

Q. While you were still working?

A. Yes.

Q. Do you remember when it was?

A. I don't remember. He was always saying it to us.

Q. You weren't discharged, were you?

A. No.

Q. You just went out on strike?

A. Yes, but I don't believe he knew I had anything to do with the Union because I had to beg for my job.

MR. GIROFSKY:

I object to this.

TRIAL EXAMINER GATES:

That last part may be stricken.

BY MR. MOSCOVITZ:

Q. Why did you go out on strike?

A. To better conditions.

MR. MOSCOVITZ:

That is all.

Cross Examination

BY MR. GIROFSKY:

Q. Are you working today?

A. No.

Q. Have you worked since you left? Since you voluntarily left your employment?

A. No.

Q. And have you applied for employment anywhere since you left?

A. No.

Q. How much are you receiving today?

MR. MOSCOVITZ:

I object.

MR. GIROFSKY:..

I believe this is material cross examination.

MR. MOSCOVITZ:

Just a moment,—it might be that your objection is properly taken. I might not have understood the prior question. Does the record disclose that she is working today?

MR. GIROFSKY:

No.

TRIAL EXAMINER GATES:

The objection is good.

BY MR. GIROFSKY:

Q. Are you receiving any income today?

A. The Union is paying me seven dollars a week for relief.

Q. What do you do in return for that seven dollars a week?

A. Practically nothing.

Q. You picket, don't you?

A. Once in a while.

Q. And prior to September 18th, 1935, what were your wages?

A. Repeat that again—I didn't understand.

Q. Before September 18th, 1935, how much did you make a week?

A. You mean from July until the day I walked out on strike?

Q. The last week you were there?

A. I believe I got, I was supposed to get sixteen, but I got fourteen.

TRIAL EXAMINER GATES:

Well, it may be relevant. Please proceed.

MR. GIROFSKY:

Exception.

A. He said they weren't allowed to smoke and one fellow got caught smoking, so this fellow got fired, so they all walked out on strike for this one fellow to get him back to work, so they were out of work so long, when they did go back, they had to put up so much money, so it wouldn't do any good, so he openly stated, it would do no good to join a union because he had the experience and he told us he really felt we should be glad because he had a girl in his office that worked for him that made eight dollars a week, using her brains.

Q. Said the girl that worked for him used her brains?

A. Yes, and she made eight dollars a week.

Q. Did he advise you to stay out of the Union?

A. Yes.

Q. Any other meetings of the same sort held?

A. Yes, I believe August 28th, Sheriff Adams came to speak to us.

Q. Oh, and was this in the plant too?

A. Yes.

Q. What time of the day?

A. Five o'clock. All the girls came down for their pay.

Q. All the girls came down for their pay?

A. Yes.

Q. You always came downstairs to get your pays on the main floor so when you get your money, it was closed and nobody could get their money and he spoke to us, he told us, he waited until all the girls

got downstairs. He said, "Wait a minute, girls, I want to introduce someone to youse."

Q. Who said that?

A. Mr. Fainblatt. And then he introduced us to Sheriff Adams, and Sheriff Adams said—

MR. GIROFSKY:

Objection.

TRIAL EXAMINER GATES:

Witness may proceed.

MR. GIROFSKY:

Exception.

A. So Sheriff Adams told us we had a nice clean place, said it was clean and sanitary and he don't believe that any girl made a low pay in there. He said, being he was looking over the payroll, he did not think so, and he told us we shall have no connection with the Union because Mr. Fainblatt would never sign for a union. Then Mr. Fainblatt spoke to us. He said, "You can call us Mr. Benjamin, Mr. Franklin, you can call me Mr. Devil, anything you can call me, as long as you bring your troubles to me," but it won't do any good to bring your troubles to him because he wouldn't do anything for you.

Q. Was that the last meeting?

A. Yes.

Q. Then they went on strike?

A. All along he was hinting to us not to have anything to do with the Union.

MR. GIROFSKY:

Object to what Mr. Fainblatt was hinting.

BY MR. MOSCOVITZ:

Q. After that, did he speak to you about the Union at all?

A. Maybe if I was in a group.

Q. Did he speak to you?

A. I was a day short. The day was put on my last week.

BY MR. GIROFSKY:

Q. The week of August 30th to September 7th, thirty-six hours?

A. I made forty hours every week.

Q. You never worked less than forty?

A. Maybe a half hour or so, but that was all.

Q. On how many occasions.

A. Once or twice.

Q. You never worked less than forty?

A. No.

Q. Do you remember the week of August 16th or August 23rd?

A. I can't remember that far back.

Q. Did you ever work less than ten hours in one week?

A. No.

Q. Isn't it a fact that on the week of August 16th to August 23rd, you only worked eight hours and received four dollars and forty-five cents?

A. That is impossible.

Q. It is impossible?

A. Yes. I always worked forty hours.

Q. Do you know you are under oath, Mrs. Morano?

A. What do you mean?

Q. Do you know you are under oath to tell the truth?

A. Yes.

Q. You say these records are wrong if they conform to figures I have given?

A. Yes.

Q. You kept a time card, didn't you?

A. Yes.

Q. And when you entered the plant you punched that clock, didn't you?

A. Sometimes I did, sometimes I had another girl punch it for me.

Q. But you had the other girl punch it for you and nobody else had her do it?

A. No.

Q. You accepted the card as it was punched, either by yourself or the other girl?

A. Yes.

Q. You would recognize those cards if you saw them?

A. Yes.

Q. When did your husband take sick?

MR. MOSCOVITZ:

Mr. Examiner, I object to that. I don't see what this woman's family life has got to do with this case.

TRIAL EXAMINER GATES:

I think that was excluded as a matter of fact.

MR. GIROFSKY:

But Your Honor permitted it all to go into the record.

MR. MOSCOVITZ:

I will withdraw my objection.

TRIAL EXAMINER GATES:

It was not in there when she recited the story.

MR. MOSCOVITZ:

I withdraw my objection.

MR. GIROFSKY:

I thought we could tell the story here.

MR. MOSCOVITZ:

Mr. Girofsky objected to my asking her about it and he was sustained, so I withdraw my objection.

Q. How much did you get—how many hours did you work that week?

A. It was close to forty hours.

Q. How many, do you remember?

A. Well, I will say forty.

Q. Are you sure?

A. Yes.

Q. How many dozen garments did you produce in those forty hours?

A. I couldn't say.

Q. Are you sure of the amount of money you received the last week?

A. I am trying to explain to you.

Q. How much did you receive the last week that you were employed there?

A. I got sixteen dollars, but fourteen was only for that week, I worked a whole day the following week.

MR. GIROFSKY:

I ask that this witness be instructed to answer my question.

A. I got sixteen dollars, but only fourteen was for that week.

Q. How many hours did you work?

A. Forty, but I am not counting the day I put in.

Q. The last week?

A. I made forty in that week, but one day from the week before.

MR. MOSCOVITZ:

Mr. Examiner, I think it would be very helpful—

BY MR. GIROFSKY:

Q. If your time card indicates a thirty-five hour

week, would you accept that time card as being correct, your own time card?

A. No.

Q. That would be an error?

A. Forty hours a week I worked.

Q. Do you know that the records of the company list you as having thirty-five hours a week from September 14th to September 21st?

A. I can't help what their records say, I am telling the truth.

Q. You got sixteen dollars and thirty cents?

A. I told you there was a day there from the week before.

Q. How much did you get the week preceding that, the last week?

A. The week before my last pay—I don't remember.

Q. How much?

A. I don't remember.

Q. Perhaps I can refresh your memory. Do you recall receiving the sum of fifteen dollars and fifty-eight cents?

A. No.

Q. You never received it?

A. No.

Q. Never?

A. No, because I was a day short that week. It was impossible.

Q. From August 30th to September 7th—do you remember—didn't you receive fifteen dollars and fifty-eight cents?

A. No, it was impossible.

MR. MOSCOVITZ:

She said it was impossible.

BY MR. GIROFSKY:

Q. The week of August 2nd to August 9th, 1935, your total time, do you know what it was?

A. No.

Q. You can't recall?

A. No.

Q. Your memory does not go back that far?

A. I lack a memory.

Q. You do lack a memory. Has your memory been lacking on all the information you have been questioned on?

A. No, I am telling the truth right now.

Q. To the best of your memory, isn't that so?

A. I cannot remember that far back, but my last pay I could remember.

Q. That takes you back to the commencement of the Union, doesn't it, yet you remember that for the purpose of direct examination; didn't you?

A. I don't understand you.

Q. Does your memory take you back to working one week, the week of August 2nd to August 9th, 1935, a total of twenty-four hours?

A. No.

Q. All right. Let's go back to the last week. How many dozen garments did you manufacture that week?

A. I can't remember.

Q. You don't remember that?

A. No.

Q. Yet you are certain that you never worked less than forty hours a week?

A. Yes.

Q. You will let that stand even though you did say here a moment ago that on occasions you worked a half hour or less?

A. That doesn't mean much.

Q. Doesn't mean much to you?

A. No.

Q. And July 19th to the 25th, how many hours did you work?

A. I don't remember, I don't remember that far back.

Q. Now, you were one of the first girls to go to Mr. Posner, were you not?

A. Yes.

Q. Who went with you?

A. Ethel Rice and Anna Santora.

Q. And the time you went was when?

A. It was after work.

Q. What day?

A. August 14th—I don't know if it was a Thursday or a Friday, I don't remember.

Q. You were still in the employ?

A. Yes.

Q. How did you learn of Mr. Posner?

A. Through a lot of girl friends that are union.

Q. How?

A. Through a lot of girl friends that are union.

Q. Your employment with Mr. Fainblatt has been since August, 1934; isn't that right? How long have you been in his employ?

A. I came to work in November.

Q. Of what year?

A. 1934.

Q. Yes. And worked until July?

A. I worked until February.

Q. Of 1935?

A. 1934.

Q. Then you had to leave because of your husband's illness?

A. My illness.

Q. Up to that time, you were satisfied with the work, weren't you?

A. My husband was working on a train to support me and the baby.

Q. Then you returned to work; didn't you?

A. Yes.

Q. Satisfied to return?

A. I had to return because I had to send my husband away.

Q. You returned in July, didn't you?

A. Yes.

Q. You worked right up to August before you did anything about seeking out a Union representative?

A. I worked until September 18th.

Q. September 18th?

A. I worked until September 18th.

Q. And all that time you didn't speak to Mr. Fainblatt at all?

A. No.

Q. About it?

A. No.

Q. You just continued on your operations, didn't you?

A. Yes.

Q. You didn't speak to Ruby?

A. No.

Q. You did continue your operations, didn't you?

A. Yes.

Q. And you worked regularly forty hours a week, you say?

A. Yes.

Q. Did you work then from July on up to September 18th, right?

A. Yes.

Q. Never speaking to Mr. Fainblatt or Mr. Ruby, did you?

A. No, Ruby spoke to me once, that is all.

Q. Why didn't you complain of conditions then to Mr. Fainblatt?

A. Because it would do no good.

Q. You never tried.

A. Other girls tried before me.

Q. Just a moment—we are talking about yourself.

A. I had the experience of the other girls.

Q. Is that the only reason?

A. No.

Q. You never tried, yourself?

A. No.

Q. Who were the other girls?

A. I couldn't remember.

Q. Why don't you remember the names of those girls?

A. Suppose I can't remember.

Q. Is it because you are under oath?

A. No.

MR. MOSCOVITZ:

Mr. Examiner, I insist that counsel should not badger the witness and try to intimidate her. It seems to me that we can proceed in a more orderly manner than this.

BY MR. GIROFSKY:

Q. Or is it because of conferences with Mr. Posner.

A. No.

Q. Mr. Posner told you to go back and work un-

der those conditions and continue on for a while; didn't he?

A. Yes.

Q. And did you notify all the girls in the plant?

A. No, most of the girls were going to the Union anyway.

Q. Did you notify any of the girls to attend any Union meetings?

A. I asked—

Q. Whom?

A. I can't say whom—I can't remember all these girls.

Q. Name the girls.

A. I can't remember all the girls.

Q. Name some of them.

A. I can't.

Q. Can't name a one? Then you didn't ask any of them?

A. I did ask.

Q. Did you notify any of those girls, do you know their names here?

A. Maybe I did.

Q. Did you?

A. Maybe.

MR. GIROFSKY:

I ask that this witness be instructed to answer this question, Your Honor.

MR. MOSCOVITZ:

It might well be that this witness has persuaded somebody that worked for Mr. Fainblatt now to join the union, and if she does, that person will be dismissed. It is highly probable.

MR. GIROFSKY:

I ask that that be stricken from the record.

BY MR. GIROFSKY:

Q. Who are the girls you invited to this meeting?

A. I can't say.

Q. You didn't invite any?

A. I did invite them.

Q. You don't know?

A. I do know.

Q. Whom did you ask?

A. I can't say.

Q. Why can't you say?

A. Because I don't remember whom I asked.

Q. When was this meeting held? When Mr. Posner was selected as the representative of the girls?

A. What do you mean, the date or what time?

Q. The date?

A. That was on August 21st, I believe.

Q. August 21st. And how ~~many~~ girls were there?

A. Well, I would say about twenty-five.

Q. There might have been less?

A. No, there was every bit of twenty-five.

Q. It might have been more?

A. No, about twenty-five.

Q. Just twenty-five. You won't go below or above?

A. No.

Q. And who were the girls?

A. Do I have to name all of them?

Q. Yes.

A. I couldn't do that.

Q. Some of them?

A. Mary Spatt; Angelina Matteis.

Q. Yes.

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A. Margaret Hoffman; Mary Gecik; Elizabeth Gecik. Is that enough?

Q. You could name more, if you wanted to?

A. If I tried hard enough.

Q. Why couldn't you name the girls that you notified?

A. I didn't say I notified those girls.

Q. As a matter of fact, you never notified anyone?

A. Yes, I did.

Q. Any of the girls that are working at the plant at the present time?

A. Do I have to answer that question?

Q. Yes, you do.

MR. MOSCOVITZ:

I object to answering that question for the reason I gave before. I submit this witness does not have to disclose the identity of present employees who may possibly belong to the Union, because of the possibility of their discharge by the employer.

MR. GIROFSKY:

I will go on record that any girl that is employed there will not be discharged by reason of any testimony brought up at this hearing.

BY MR. GIROFSKY:

Q. Did you notify any of the girls who are now working at the plant to attend the Union meeting?

A. Yes.

Q. Who?

MR. MOSCOVITZ:

I object. I insist that that question be not answered.

MR. GIROFSKY:

I don't see why I can't elicit any testimony

from the witness when government counsel can.

TRIAL EXAMINER GATES:

I think on that one point it would be unfair to identify any girl working at the plant.

BY MR. GIROFSKY:

Q. How many of the present employees did you notify?

A. I can remember only two.

Q. They are still employed, aren't they?

A. Yes.

Q. Are they active in the Union?

A. I couldn't say.

Q. Have they attended any meetings since then?

A. No.

MR. MOSCOVITZ:

There has not been any testimony that they belonged to the Union.

MR. GIROFSKY:

Oh, yes.

MR. MOSCOVITZ:

The testimony is that they were notified, not that they belonged to the Union.

BY MR. GIROFSKY:

Q. Did they attend the meetings?

A. No.

Q. They continued working, didn't they?

A. Yes.

Q. You were working September 18th, weren't you?

A. Yes.

Q. Fay Katz was not working that day, was she, to the best of your knowledge?

A. I don't believe so.

Q. She had not been working for some time before that day, had she?

A. Yes, she was working.

Q. She was working until—

A. She was working until twelve o'clock, I think.

Q. The strike occurred at ten in the morning, didn't it?

A. Yes.

Q. Have you ever gone back to ask for employment?

A. No.

Q. You have not?

A. No.

Q. Why haven't you?

A. Because I have been through enough without going back for more.

Q. Is that the only reason?

A. What do you mean?

Q. The reason you have just given, is that the only reason you haven't gone back to work?

A. Because it is not enough to support us.

Q. Have you sought employment elsewhere?

A. Several times.

Q. Have you received it?

A. No.

Q. You are not making as much at the present time as you were before you walked out?

A. My husband is working now.

Q. I am speaking about you, not your husband. You were receiving more before you walked out than you are at the present time?

A. No, I am making more now.

Q. More now?

A. Yes.

Q. I mean you, not your husband. You just testified you are making seven dollars a week now.

A. Yes, if you mean it that way.

Q. Isn't it so, that is the only income you have, isn't that so, not counting on your husband?

A. No.

Q. You are getting that from the strike relief?

A. Yes.

Q. Who pays the strike relief?

A. The International Ladies Garment Workers Union.

Q. And is your family on emergency relief at the present time?

A. No.

Q. Have they been in the past year?

A. No.

Q. Never.

A. Never.

Q. Who called this strike meeting?

A. Us girls.

Q. Who do you mean by us girls?

A. All the girls.

Q. Name them?

A. Mary Spatt—

Q. How many girls?

A. Oh, I couldn't say.

Q. You don't know?

A. No.

Q. Who called the meeting at which Mr. Posner was authorized to represent you—

A. What do you say?

Q. Who called the meeting that was held at which Mr. Posner was decided upon as representative?

A. We did.

Q. Who is we?

A. All the girls.

Q. How many?

A. Oh, I can't say.

Q. Were all the employees of the plant there?

A. No.

Q. How many were employed?—have you paid any dues to the Union?

A. No.

(Witness excused.)

MR. MOSCOVITZ:

Mr. Examiner, am I correct in understanding that the proposed list of names that I marked for identification before is before you under advisement, and that it is going to be left with the Examiner?

TRIAL EXAMINER GATES:

The reporter will keep it.

MR. MOSCOVITZ:

In view of the fact that we will probably have to go ahead tomorrow anyway, I would like to adjourn right now.

(Thereupon at 5 o'clock P. M., an adjournment was taken until 10 o'clock A. M., February 18, 1936.)

County Court House,
Somerville, New Jersey
Tuesday, February 18, 1936.

The above entitled matter was resumed for hearing, pursuant to adjournment taken February 17th, 1936, at ten o'clock A. M.

PROCEEDINGS

TRIAL EXAMINER GATES:

If counsel are ready, we may as well proceed.

ETHEL RICE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

BY MR. MOSCOVITZ:

Q. What is your full name?

A. Ethel Rice.

Q. Where do you live?

A. North Branch.

Q. North Branch, New Jersey?

A. Yes.

Q. And are you employed at the present time?

A. No.

Q. Who was your last employer?

A. The Somerset Manufacturing Company.

Q. How long did you work for the Somerset Manufacturing Company?

A. About eight months.

Q. When did you go to work for the company?

A. It was in January—I don't remember whether it was the 2nd or the 3rd week.

Q. January of 1936?

A. 1935.

Q. And until what date, do you recall, did you work?

A. I worked until the first day of the meeting that we had of the Union.

MR. GIROFSKY:

I object, unless she fixes the time of that meeting.

BY MR. MOSCOVITZ:

Q. Do you recall what the date of that was?

A. August 21st.

Q. 1935?

A. 1935.

Q. And what happened to you on that date?

A. Well, that was the date that the mayor was in our place, and we girls, the floor girls, worked on the main floor and the mayor—

MR. GIROFSKY:

I wish this witness would confine her remarks to her own conduct, her own activities.

BY MR. MOSCOVITZ:

Q. You just tell me what happened to you on that day?

A. Well, I can't explain it unless I tell it that way.

Q. All right. You go ahead and explain it.

A. Well, the mayor was making the speech upstairs and we—

MR. GIROFSKY:

I object to any references to the mayor's speech. It is immaterial and irrelevant.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Exception.

A. The mayor was making the speech upstairs and we floor girls were not considered important enough to be invited, I guess, and we continued with our work, and we continued until after the mayor had finished his speech and the girls that finished their work, we went for our pay, and we worked, I believe, overtime that day and at the end of that, Mr. Fainblatt came over to Lorraine Heitz and I and he said, "I have no more work for you girls—you can go to the Union for work".

Q. He said "I have no more work for you two girls?"

A. He didn't point, he came over to us and said, "I have no more work for you two girls".

Q. Then did he say, "Go to the Union for work."?

A. Yes.

Q. What did you do then? Leave?

A. Yes.

Q. Was that the last you were employed by the company?

A. Yes.

Q. Did you ever speak with Mr. Fainblatt prior to that date about the Union?

A. No.

Q. Did you ever speak with any one of the supervisory employees of the company before that date about the Union?

A. No.

Q. When did you join the Union?

A. I was one of the girls that went with Mary Morano and Anna Santora to Mr. Posner's office, and we joined while we were there.

Q. Are you still a member of the union?

A. Yes.

Q. After going to Mr. Posner's office, and becoming a member of the union, were you actively engaged in your union work?

A. Yes.

Q. And that was during the time that you were employed by the company?

A. Yes.

Q. And by being actively engaged in union work, what do you mean?

A. Well, I tried interesting the girls in the fac-

A. Well, the skirts would be in sizes and colors and the boxes would be on the floor or in piles all along the floor, and one of the shipping clerks asked me—one of the shipping clerks told me to come over and help him, to put the skirts in the boxes, and put them in tissue paper and close them.

Q. And who was the shipping clerk?

A. Al.

Q. Are there any other shipping clerks?

A. Yes.

Q. Do you know their names?

A. They would come from New York with Mr. Sol.

Q. But Al is there?

A. Al was there.

Q. And was he one of the employees of the Somerset Manufacturing Company?

MR. GIROFSKY:

I object to this, Your Honor. How could this witness know who is employed by the Somerville and who was employed by Lee Sportswear?

MR. MOSCOVITZ:

The testimony is already in the record. I will withdraw it. Mr. Fainblatt yesterday testified that Al was an employee of the Somerset Manufacturing Company.

MR. GIROFSKY:

I don't see how that is proper.

TRIAL EXAMINER GATES:

Objection sustained.

MR. GIROFSKY:

Exception.

MR. MOSCOVITZ:

Your objection is sustained. I withdraw the question.

BY MR. MOSCOVITZ:

Q. Do you know whether or not other employees working with you have been asked from time to time to aid in shipping?

A. I object to that. I think the other employees are available. They are the best evidence.

MR. MOSCOVITZ:

The question is quite proper.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKI:

Exception.

A. I don't know. I believe I was the only one that would help Al put the skirts in the boxes besides the fellows that would come from New York.

Q. I see. And were you working on an hourly basis or were you working on a weekly salary, or what?

A. Hourly basis.

Q. Piece work, or did you get so much an hour no matter what you turned out?

A. So much an hour?

Q. At the time you were discharged, how much were you receiving an hour?

A. Twenty-five cents.

Q. And do you recall how many hours a week you were working?

A. At the time I was discharged?

Q. Yes.

A. I don't recall exactly how many hours I was working.

Q. Were you working a different number of hours each week prior to the date of your discharge?

A. I don't know what you mean.

tory during lunch hour and after work and before work.

Q. Tried to get the other employees to become associated with this organization?

A. Yes.

MR. GIROFSKY:

I think her statements are sufficient for the record, Mr. Moscovitz. I don't see why you have to emphasize them.

MR. MOSCOVITZ:

If my statements are in any way conflicting with those of the witness, I will stand corrected.

BY MR. MOSCOVITZ:

Q. Did you attend all the Union meetings?

A. Yes.

Q. What kind of work were you doing for Mr. Fainblatt?

A. Well, I trimmed, occasionally I helped fold, I helped to put the skirts and slacks into sizes. I had to ship sometimes.

Q. Sometimes, did you say?

A. Yes.

Q. You were engaged then in what Mr. Fainblatt calls production?

MR. GIROFSKY:

I object, Your Honor, I think the witness is best qualified to tell what she was engaged in.

MR. MOSCOVITZ:

I withdraw the question.

BY MR. MOSCOVITZ:

Q. Is that in the tailoring department?

A. Yes.

Q. Now, you say you ship sometimes? Was that very often?

A. No, it only happened I believe twice.

Q. Twice during the time that you were there; is that it?

A. Yes.

Q. Do you know whether or not other employees aided in shipping?

MR. GIROFSKY:

I object. If Your Honor please, Mr. Moscovitz, by his complaint in this case, has designated this girl as a member of the production unit. Now, does he wish to amend his complaint?

MR. MOSCOVITZ:

No, I don't Mr. Girofsky. It is simply that I am inquiring as best as I can into the manner in which the business is conducted. I don't care for this particular testimony to go to the question of this particular witness' work, but I am interested in knowing exactly how the business is carried on; if this witness can help in giving that information, I think we should solicit it. If she cannot, of course, she won't be able to answer it.

MR. GIROFSKY:

Then too, Your Honor please, we don't know just what shipping means, when Mr. Moscovitz asks about shipping. I think he should first lay his foundation for it, if there is one.

TRIAL EXAMINER GATES:

Proceed.

MR. MOSCOVITZ:

I will ask her about it.

BY MR. MOSCOVITZ:

Q. Before you answer that question, I would like to ask you this one: what do you mean by helping in shipping?

Q. I mean this: Would you work, say, thirty hours one week, and perhaps twenty-five another week?

MR. GIROFSKY:

I object to leading questions.

MR. MOSCOVITZ:

After all, if the witness does not show any comprehension of the question, it seems to me quite proper to lead a little. I am not telling her what to say.

TRIAL EXAMINER GATES:

Reframe the question.

A. I would work sometimes twenty-five hours or so, sometimes I would come in at ten o'clock and sometimes I would come in at one. Sometimes I would come in at ten o'clock and he would tell me to go home and come back at one o'clock, and then I would have to work until five-thirty or six, when I would come on.

Q. So your working hours were irregular?

A. Yes.

Q. How long had you been employed on that irregular basis?

A. I was employed on that irregular basis about two weeks or three weeks after I was given my cut.

Q. You received a cut?

A. Yes.

Q. Had you been making more than twenty-five cents an hour?

A. I was receiving the basis of thirteen dollars a week, that was about thirty-two and a half cents an hour.

Q. When was that?

A. That was after the N. R. A. I was given my cut after the N. R. A.

Q. Was it during the N. R. A. that you were making this thirty some odd cents an hour?

A. Yes.

Q. After the N. R. A., you were cut—that was to twenty-five cents an hour?

A. Yes.

Q. During the N. R. A., were you working regularly or irregularly, that is regular or irregular hours?

A. Sometimes during the N. R. A. I would work until half past five or so and the next day instead of coming in at eight o'clock, I would come at half past eight.

Q. Do you remember how many hours you used to work a week during the N. R. A.?

A. Sometimes forty and sometimes forty and a half, sometimes forty-one. I don't remember exactly.

Q. Would it average around that?

A. Yes.

Q. After the N. R. A., coming back again to the irregular work, could you give me an average number of hours that you worked a week?

A. Well, right after I was given my cut, the first week, I received a straight ten dollars, then after that it was irregular.

Q. But can you average the time that you worked after the N. R. A. and tell me what the average week's work in hours was?

A. I couldn't say.

Q. You couldn't say whether it was—can you give me some idea of the average weekly income you received during this irregular period?

MR. GIROFSKY:

When?

MR. MOSCOVITZ:

From the time she received her cut after the N. R. A. went out until the date of her discharge.

A. The first week I earned ten. After that I got six or seven.

BY MR. MOSCOVITZ:

Q. Did you ever make ten dollars a week again after the N. R. A.?

A. I don't believe I did.

Q. What was the lowest amount you received after the N. R. A. for a week's work?

MR. GIROFSKY:

Your Honor, this question is improper. There is no testimony that she has worked a complete week. Unless Mr. Moscovitz fixes a full week—

(Question read to the witness).

MR. MOSCOVITZ:

I will put it this way—I will withdraw that question, and put it this way.

BY MR. MOSCOVITZ:

Q. What was the lowest amount of money you received during any one week after the N. R. A.?

MR. GIROFSKY:

I object to this question unless the witness fixes the number of hours during any one week.

MR. MOSCOVITZ:

Of course, the statement of the amount would fix the hours. If she is making twenty-five cents an hour, that would be fixed.

TRIAL EXAMINER GATES:

I think she may answer.

A. After the N. R. A. went out of effect, there were girls receiving less wages than I was.

Q. Just for yourself now.

A. Since I was higher paid, I wasn't working as many hours as the other girls were.

Q. But what was the amount you received during a week, the lowest amount you received during any one week after the N. R. A.?

A. I don't remember.

Q. Well, you testified just before that you received as low as six dollars for a week?

A. That was after my cut.

Q. I am talking about after your cut?

MR. GIROFSKY:

I object.

MR. MOSCOVITZ:

That is in the testimony.

MR. GIROFSKY:

I object to this line of questioning unless she fixes the hours in any one week.

TRIAL EXAMINER GATES:

I don't see any necessity for fixing the hours. The objection is overruled.

BY MR. MOSCOVITZ:

Q. After the N. R. A., according to your testimony, you got a cut; is that right?

A. Yes.

Q. What was the smallest amount that you received in one week, if you remember?

A. It was between five and seven, I couldn't say more than that.

Q. Between five and seven dollars for a week.

MR. GIROFSKY:

For a week? That was not the question. The question was how much she received in any one week. Does that refer to that sum of money—does that refer to payment for a week's work?

TRIAL EXAMINER GATES:

That is clear on the record. Please proceed.
BY MR. MOSCOVITZ:

Q. And the most that you received was ten dollars?

A. Yes.

Q. After your discharge, did you ever go back again to Mr. Fainblatt for work?

MR. GIROFSKY:

I object to this, Your Honor, there is no testimony that she was discharged.

TRIAL EXAMINER GATES:

Yes there is. She may answer.

MR. GIROFSKY:

The only testimony here from the witness is her own testimony that she was told not to come in. There is no testimony that she was discharged.

TRIAL EXAMINER GATES:

Very well. Objection sustained. Please reframe the question.

BY MR. MOSCOVITZ:

Q. What was the last date you worked for Mr. Fainblatt?

A. August 21st.

Q. What happened to you on that date?

MR. GIROFSKY:

I object. She has already answered.

TRIAL EXAMINER GATES:

Objection sustained.

BY MR. MOSCOVITZ:

Q. And after you left on the date already referred to, did you go back to Mr. Fainblatt and ask for more work?

A. The following day we went for our pay, Lorraine and I.

MR. GIROFSKY:

I object to any references to any other girl.

TRIAL EXAMINER GATES:

It doesn't make any difference: Please proceed.

MR. GIROFSKY:

Exception.

A. And we asked for our pay. Mr. Fainblatt—

MR. GIROFSKY:

Who is we?

A. I just said Lorraine—

MR. GIROFSKY:

I have to know for cross examining.

MR. MOSCOVITZ:

You can find out on cross examination.

BY MR. MOSCOVITZ:

Q. What were you saying?

A. We asked Mr. Fainblatt if there was any work for us because the day we were fired we were sure we would have to come in the next day because there was so much work and when we came back, he said, "You see, we have no girls working". He opened the door and we knew the girls were on the third floor.

MR. GIROFSKY:

What she did is being asked. That is not responsive.

TRIAL EXAMINER GATES:

Please continue.

A. He said, "You see, I have no more work for you—none of the girls are here". And the girls were up on the third floor.

Q. Then what did you do?

A. We took our pay and we went home.

Q. Did he make any reference to you at that time about the Union?

A. No.

Q. Was that the last time you went back to see Mr. Fainblatt?

A. Well, the next week I went back for the rest of my pay for that week and I asked for my smock and went home.

Q. And that was the last conversation you had with Mr. Fainblatt?

A. The last week I went in for my pay I didn't see Mr. Fainblatt. I saw Miss Lee.

Q. Who is that?

A. Mr. Fainblatt's daughter.

MR. GIROFSKY:

I object to that. There is no testimony that that is her name.

MR. MOSCOVITZ:

The witness is giving the testimony.

TRIAL EXAMINER GATES:

Objection overruled.

BY MR. MOSCOVITZ:

Q. Is Miss Lee the daughter of Mr. Fainblatt?

A. So she—yes.

Q. That is what you girls called her?

A. Yes.

Q. That is the name that she was known by in the plant?

A. Yes.

MR. GIROFSKY:

I object to that.

BY MR. MOSCOVITZ:

Q. Didn't Miss Lee work with you girls?

A. No. I never saw her working with us.

Q. What did she used to do, do you know?

- A. The time I was in, she was in the office.
Q. Is that where she always was—in the office?
A. I don't know.
Q. The times that you saw her was in the office?
A. Yes.
Q. Had you ever seen her before at any time?
A. I believe I saw her once before downstairs.
Q. In the plant?
A. Yes.
Q. On the floor?
A. I believe she was talking to Mr. Fainblatt at the time.

Cross Examination

BY MR. GIROFSKY:

Q. Mr. Fainblatt's daughter's name is Fainblatt?
Isn't it?

A. She was known as—

Q. Isn't it?

A. I don't know. I have heard rumors that she is married.

Q. Her name is not Miss Lee—yes or no.

A. I don't know.

Q. And you were not in the office very often, were you?

A. We weren't allowed.

Q. And you didn't see her in the office very often, did you?

A. This once that I went for my pay, I did.

Q. Once in all the time that you worked there, isn't that right?

A. Well, the other time I saw her I believe was in the office too.

Q. Then, since January up to August, you saw her twice in the plant; is that right?

A. I believe that is all I did see her, I am not sure though.

Q. That is your best recollection?

A. Yes.

Q. Are you sure of all your testimony that you have given?

A. Yes.

Q. Or is it the best recollection you have?

A. Well, I have told to the best of my knowledge.

Q. Not a certainty, however; is it?

MR. MOSCOVITZ:

Well, Mr. Examiner, how far does the witness have to be broken down? She said she gave it to the best of her knowledge. It seems to me it is the best anybody could give.

MR. GIROFSKY:

She said she is not certain about it.

MR. MOSCOVITZ:

She did not say she was uncertain about it.

TRIAL EXAMINER GATES:

Please continue the examination. I am getting tired of this bickering.

BY MR. GIROFSKY:

Q. Now, when was the last day you worked?

A. The last day? August 21st.

Q. August 21st. Are you sure of that date, Miss Rice?

A. Quite sure.

Q. You are not certain of it, are you?

A. Well, I said I was quite sure.

Q. That is to your best recollection, isn't it?

A. Yes.

Q. Records were kept of your number of hours, days of work, weren't they?

A. Well, the only record that could have been kept was by the time card and not always would I punch it.

Q. You always punched it?

A. Not always would I punch it.

Q. Why didn't you punch it?

A. Well, when I worked overtime the head floor girls would take the card and punch it ahead of time so we could work overtime but the times were punched at the time we were supposed to quit.

Q. How often would that occur?

A. Quite often.

Q. How long before August 21st would it occur?

A. Well, it only occurred during the N. R. A. time. After the N. R. A. it didn't occur.

Q. Did you permit her to take the card?

A. We were not permitted to leave our work.

Q. Did you permit her to take your card?

A. Yes.

Q. What work were you engaged in at the time she first took the card?

A. Floor work.

Q. What do you mean by floor work?

A. Clipping and folding, lacing, things of that sort.

Q. And you were an operator there at one time?

A. No, never.

Q. You were an operator there, weren't you?

A. No, I was not.

Q. Did you ever try to operate?

A. No.

Q. How much did you receive the last week, in your last pay?

A. I don't know.

Q. You don't know?

A. No.

Q. How many days in the last week that you were there did you work?

A. In the last week I worked Monday, Tuesday and Wednesday but I don't know how many hours it was.

Q. Now, Miss Rice, can you say you worked two hours the first day of the last week?

A. No, I don't know.

Q. And can you say you worked two hours the second day of the last week?

A. I never worked two hours a day. I always worked more.

Q. And you were paid twenty-five cents an hour for your work; is that right?

A. Yes.

Q. And for the number of hours that you worked, you always received your pay for the number of hours that you actually worked; didn't you?

A. Yes.

Q. And now, let's take the week preceding the last week that you were there, the week preceding the last week there. How many hours that week did you work?

A. I can't very well remember how many hours I worked.

Q. You can't. And how many days in a week did you work?

A. I don't remember.

Q. You can't. And how many days in a week did you work?

A. I don't remember.

Q. And how much did you receive that week?

A. I guess it was between five and seven.

Q. Do you know?

A. I couldn't be positive of my pay at that time.

MR. MOSCOVITZ:

She is giving her best recollection.

MR. GIROFSKY:

Now, just a moment, Mr. Moscovitz.

BY MR. GIROFSKY:

Q. You don't know how many hours you worked that week, do you?

A. No.

Q. Let's take the week before that. How much did you receive?

A. I don't know.

Q. You don't know. And how many hours in that week did you work?

A. I don't know.

Q. Now, did you work the week before that—we are back four weeks before you left, the fourth week before you left. Do you remember how many days you worked then?

A. I believe that was about the time I was given my cut and that was the only week that I earned straight ten dollars.

Q. Are you sure of that Miss Rice?

A. I am not sure whether that is the week or not, but it was around that time.

Q. You are not sure?

A. No.

Q. And you are no more sure of that than you are of your knowledge concerning your average weekly wages, are you?

A. I don't understand you.

Q. You know you are no more sure of the amount of money you received on the fourth week

preceding your departure from the plant than you are of the amount of average wages you received from July down to the day you left. Yes or no.

A. I can't answer that.

Q. Let's take the fifth week before you left the employ, or left the plant, how many hours in that week did you work?

A. You mean the fifth week before I was discharged.

Q. No, before you left the employ.

A. I don't remember.

Q. And how much did you receive in that week?

A. I don't remember.

Q. You don't remember. And your failure to remember, is it just an accommodating answer?

A. What was that?

Q. Your failure to remember, is it just an accommodating answer for the purpose of this examination?

A. No.

Q. Let's take the sixth week preceding?

A. I don't remember.

Q. You don't know?

A. I don't remember.

Q. Then you don't know in the last six weeks how much you received, do you?

A. I am no book fiend.

Q. And yet you have given counsel an average weekly wage?

A. I gave an average—

Q. Yes or no?

A. Yes.

Q. Now you went to Plainfield to join a union, didn't you?

A. Yes.

Q. And who did you go with?

A. Anna Santora and Mary Morano.

Q. Just the three of you?

A. Yes.

Q. You went there of your own accord; isn't that right?

A. Yes.

Q. And when you went to Plainfield, where did you go in that city?

A. To Mr. Posner's office.

Q. And were you there at Mr. Posner's invitation?

A. No.

Q. You went there voluntarily?

A. On my own accord.

Q. No one compelled you to go there, did they?

A. Why should they.

Q. That's right. And did you sign an application at Mr. Posner's office?

A. Yes.

Q. Did Mr. Posner invite you to sign the application?

A. No.

Q. Who else was present at the time?

A. The two girls and Mr. Posner, besides myself.

Q. Did you pay any dues upon signing the application?

A. No.

Q. Have you ever paid any dues?

A. No.

Q. And have you ever received any notices from the Union that you were accepted in the Union, a notice in written form?

A. No.

Q. Now, you went back to the—was that while you were working for Mr. Fainblatt?

A. Yes.

Q. Did you go to Plainfield while you were working for Mr. Fainblatt?

A. Yes, after working hours.

Q. On what day?

A. I don't know if it was a Thursday or a Friday.

Q. Can you fix a date?

MR. MOSCOVITZ:

Date for what?

MR. GIROFSKY:

The date that she went there.

MR. MOSCOVITZ:

If it will help Mr. Girofsky, I can give him the application blank that has the date on it.

MR. GIROFSKY:

I want this witness' statement.

A. It was either the 14th or the 15th.

Q. What time of the day was it?

A. After working hours.

MR. MOSCOVITZ:

Mr. Examiner, I think perhaps the hearing could be expedited if we could avoid a lot of these immaterial details.

TRIAL EXAMINER GATES:

The witness may answer.

A. It was between five and a quarter after six.
BY MR. GIROFSKY:

Q. When did you have the first meeting in your Union among you three girls?

A. What do you mean, among us three girls.

Q. You were the only three girls who were members of the Union; isn't that right?

A. We were the first three to start.

- Q. When did you hold your first meeting?
A. August 21st.
Q. Where?
A. Harmony Hall.
Q. Where is that?
A. Raritan.
Q. Who was present?
A. Most of the girls that had signed, and had interest in signing, and Mr. Posner.
Q. Who were they?
A. I don't think I could point them all out.
Q. You can't?
A. No.
Q. Did you know all the girls there?
A. Most of them.
Q. Well name those you knew.
A. There was—
Q. Just look at me.
A. I have to look at their faces.
Q. Just look at me and answer that question.
A. By looking at your face I couldn't know the names of the other girls.
Q. And by looking at the faces of others, you could pick them out at random?

MR. MOSCOVITZ:

Wouldn't Mr. Girofsky permit her to refresh her recollection by looking at the faces of the girls?

MR. GIROFSKY:

No, this is all matters of her own knowledge.

A. There was Angelina Matteis. There was Marjorie Hovan. I don't remember all of them.

BY MR. GIROFSKY:

- Q. You don't know, do you?
A. I don't remember.

MR. MOSCOVITZ:

Mr. Girofsky, will you stop standing in the face of this witness.

BY MR. GIROFSKY:

Q. You don't know, do you?

A. I don't remember.

Q. You don't know, do you?

A. I said I don't remember.

Q. Is that the best answer you can give?

A. Yes.

MR. MOSCOVITZ:

The answer is "I don't remember".

BY MR. GIROFSKY:

Q. Were all the girls present actually working at the plant on the day of the meeting?

A. I don't understand the question.

(Question read to the witness).

A. To the best of my knowledge they were.

Q. Are you sure of it? Would you say they were? Yes or no.

MR. MOSCOVITZ:

I wish Mr. Girofsky wouldn't jump down the throat of the witness.

MR. GIROFSKY:

I am three seats from her.

THE WITNESS:

You have a funny understanding of three seats.

MR. GIROFSKY:

I didn't ask you. You are under oath to give testimony here.

MR. MOSCOVITZ:

She is giving it.

BY MR. GIROFSKY:

Q. Do you know if all the girls employed were

actually working on the day of the meeting, yes or no?

A. To the best of my knowledge.

Q. Do you know?

TRIAL EXAMINER GATES:

She answered that.

MR. GIROFSKY:

She has not. She said to the best of her knowledge. I asked her whether or not they were working. It is not responsive.

MR. MOSCOVITZ:

She said to the best of her knowledge.

MR. GIROFSKY:

What—that they were not working?

A. They were.

BY MR. GIROFSKY:

Q. How many were at that meeting?

A. I would say about—

Q. How many?

A. I can't say how many—I did not count them.

Q. You don't know, do you? You were one of the organizers; weren't you?

A. Yes.

Q. What is the last day you were at the plant?

A. You mean working?

Q. Yes.

A. August 21st.

Q. How many hours did you work on that day?

A. I don't remember.

Q. You don't know?

A. I don't remember.

Q. And when did you next go back to the plant?

A. The following day, for my pay.

Q. You went back for your pay? And you left your smock at the plant; didn't you?

A. Yes.

Q. And when did you go back and take the smock?

A. The following Thursday.

Q. The following Thursday. That was how many days after you were there before?

A. About a week.

Q. About a week. You left your belongings there—your work garments?

A. I had forgotten them.

Q. Now you had another meeting, didn't you?

A. Yes.

Q. And where was that held?

A. The same place.

Q. When?

A. About the 28th of August.

Q. Did you pay for the use of that hall?

MR. MOSCOVITZ:

Mr. Examiner, if Mr. Girofsky would like to know, I understand that the International organization paid for the use of the hall.

MR. GIROFSKY:

I object to that, Your Honor, this witness has been asked a question. Unless you want to take the stand, Mr. Moscovitz.

MR. MOSCOVITZ:

You want to know and I will tell you.

MR. GIROFSKY:

Now, the witness has heard the suggestion.

A. It was no suggestion. I knew the International paid for the hall.

BY MR. GIROFSKY:

Q. How did you know?

A. Because we couldn't pay for the hall.

Q. Is that the best answer you can give?

A. ² Yes.

Q. Did you see them pay for it?

A. No.

Q. Did they pay for it by cash or check?

A. I don't know.

Q. You don't know whether the International paid for it or not, as a matter of fact, do you?

A. We wouldn't have got the hall the next time if it was not paid for.

Q. How many were at the meeting?

A. I don't remember exactly.

Q. You were one of the organizers?

A. Yes.

Q. You were one of the officers?

A. We didn't have any officers.

Q. You were one of those instigating the union with Mr. Posner?

A. Not with Mr. Posner.

Q. With Mr. Ross?

A. We asked Mr. Ross if he would help us.

Q. He was not in the employ of the company at that time, was he?

A. At what time?

Q. At the time you went to Plainfield the first time?

A. No.

Q. And he was not in the employ of the company when you had your second meeting, was he?

A. No.

Q. Now, who was at that meeting?

A. What do you mean, the girls?

Q. Yes.

A. I told you before, I don't remember all of them.

Q. You don't remember.

MR. MOSCOVITZ:

All of them, she said.

BY MR. GIROFSKY:

Q. How many were there?

A. I couldn't say how many. I could say approximately though.

Q. That's all. You said you couldn't say. Who else was present at the meeting besides the girls?

A. Besides the girls?

Q. Yes.

A. Mr. Posner.

Q. And there were others at the meeting that were not employed at the Somerville or the Somerset Manufacturing plant, isn't that right?

A. I don't know.

Q. You don't know. Were any dues paid at that meeting?

A. No.

Q. Are you being paid at the present time?

A. At the present time, yes.

Q. By whom?

A. By Mr. Posner.

Q. Who is furnishing the money to Mr. Posner?

A. The International Ladies Garment Workers Union.

Q. How much a week have you made since you have been with the picketing group?

A. I have been getting about seven dollars.

Q. Seven dollars. And how many hours a day do you work?

A. We picket.

Q. You don't call that work, do you?

A. Well, working for our own benefit.

Q. That is a lot of fun to you, isn't it?

A. What do you mean "fun"?

Q. Now, did you give notice to the girls that a meeting would be held?

A. I told them.

Q. Now, whom did you tell?

A. You mean you want me to name them?

Q. Yes.

A. I couldn't name them.

Q. Did you give notice to all the girls?

MR. MOSCOVITZ:

—What difference does all this testimony make in this case. I mean, it seems to me if Mr. Girofsky would explain what he is driving at, I wouldn't raise any objection.

MR. GIROFSKY:

I will lead up to that point. I am trying to do that, I think.

BY MR. GIROFSKY:

Q. What is the answer to the last question?

A. No, I did not.

Q. How many attended that meeting?

A. I don't remember.

Q. And that was the meeting when Mr. Posner was chosen as representative of the employees of the plant; is that right?

A. Yes.

Q. And you don't know how many girls were there?

A. I could give an approximation.

Q. Can you name them?

A. No.

Q. Now, your duties at the plant were carrying material to the operators—part of your activities?

A. I never carried material to the operators. I brought them upstairs to the tables.

Q. You laid the material on the tables?

A. The material would be on the table and if I needed the table, I would bring the material upstairs and put it on the tables so I could use it.

Q. You were not known as a shipping clerk, were you?

A. No.

Q. And you pressed?

A. No.

Q. Did you fold garments?

A. Occasionally.

Q. And you know Sol Fainblatt; don't you?

A. Yes.

Q. He did the shipping at the plant; didn't he?

A. Alone?

Q. To the best of your knowledge?

A. No, he used to have fellows helping him.

Q. I see. Fellows helping him. And you placed the garments within a box, didn't you?

A. Not one box.

Q. Boxes?

A. Yes.

Q. And that was the last act that you had to do with a garment; isn't that right?

A. Well, he would have the order and tell me which skirts to put in and I would put them in and close the box.

Q. And when you packed—in other words, these garments in the boxes—you considered that shipping; isn't that right?

A. Yes.

Q. That is all.

Redirect Examination

BY MR. MOSCOVITZ:

Q. You testified before that, at the time of your discharge, you were busy?

A. Yes.

Q. And did you have a lot of work to do then? Did you have a lot of work to do?

MR. GIROFSKY:

I object to this. This is improper redirect. Mr. Moscovitz has gone all over the phases of the activities of the plant.

MR. MOSCOVITZ:

It is very important in view of Mr. Girofsky's Answer in this case.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Exception.

A. I believe we worked overtime that day.

MR. GIROFSKY:

What day is this?

A. August 21st, and there was a pile of work there, and I said to Lorraine, "Gee", I said, "we will have to come in about seven o'clock tomorrow—there is so much work".

BY MR. MOSCOVITZ:

Q. Don't pay any attention to that conversation over there, just answer the questions. Now, what were you called? There has been testimony about your having done this type of work, and a little of this type of work, and so on, but what was your actual work in the plant?

MR. GIROFSKY:

I object to this, Your Honor, he has gone into

this quite thoroughly on his direct examination. It is not proper redirect.

TRIAL EXAMINER GATES:

Well, that may be. However, I think we ought to have it in the record.

MR. GIROFSKY:

What others might call her is immaterial.

MR. MOSCOVITZ:

It seems to me she has a classification. I would like to know the classification. Was she a trimmer, or a finisher, or what?

BY MR. MOSCOVITZ:

Q. What were you?

A. I was a floor girl.

Q. Is that the only name you went by?

A. I believe I was called a trimmer and a cleaner to.

Q. I see. And as a trimmer, you use a scissors?

A. Yes.

Q. Now, at the time you attended the meeting in Raritan with Mr. Posner, referred to by Mr. Girofsky on cross examination as the second meeting, approximately how many employees attended?

MR. GIROFSKY:

I object to this, Your Honor. This is a matter in issue. The number of girls at the meeting is in issue and unless he can definitely fix the number, it is immaterial, irrelevant.

TRIAL EXAMINER GATES:

I don't think it is immaterial.

MR. GIROFSKY:

Improper.

TRIAL EXAMINER GATES:

She can tell.

MR. MOSCOVITZ:

I would like to know if she knows. Mr. Girofsky asked her the question. She said she didn't know the exact number.

TRIAL EXAMINER GATES:

The witness may answer.

A. There were between twenty-five and thirty-five.

BY MR. MOSCOVITZ:

Q. That was the second meeting?

A. Yes.

Q. Then there was a meeting after that?

A. Yes.

Q. Do you have some idea how many were there?

MR. GIROFSKY:

I object to that, for the same reason.

TRIAL EXAMINER GATES:

Same ruling.

MR. GIROFSKY:

And the additional reason that the witness cannot fix the names and identity of the person there:

MR. MOSCOVITZ:

We will take care of that later.

BY MR. MOSCOVITZ:

Q. Approximately how many?

A. I would say—

MR. GIROFSKY:

This is not the best proof, on his own admission.

BY MR. MOSCOVITZ:

Q. Answer the question.

A. There was about twenty-five—thirty-eight or so.

TRIAL EXAMINER GATES:

I would like to get this straight. What counsel is referring to as first, second and third meetings, I would like to get that straight.

MR. MOSCOVITZ:

The reference is already in the record, Mr. Examiner, as to first, second, and third meetings.

TRIAL EXAMINER GATES:

None of those refer to the meeting of the three girls and Mr. Posner; is that correct?

MR. MOSCOVITZ:

Yes.

TRIAL EXAMINER GATES:

Meetings of the employees.

MR. MOSCOVITZ:

Right.

BY MR. MOSCOVITZ:

Q. You testified in answer to Mr. Girofsky's question that you always received pay for the number of hours that you actually worked; is that right?

A. Yes.

Q. You also testified that the forelady, during the time prior to your cut, handled your cards for you?

A. She was the head girl of the floor. I don't think she was called the forelady.

Q. What was her name?

A. Jane.

Q. Jane. What do you mean when you say she handled the cards for you?

A. There was work that had to go out and we had to have it sent out. The work was ready and it was not cleaned, and folded. She would take the

cards upstairs and punch them and we would continue working.

Q. That is, your time card?

A. Yes.

Q. And if you worked five hours that day, for instance, would she punch the five hours?

MR. GIROFSKY:

I object to that, Your Honor, telling what someone else did.

MR. MOSCOVITZ:

I am asking her if she knows.

TRIAL EXAMINER GATES:

I think the question is proper. She may answer.

A. If there was overtime to be worked, then she punched the cards; otherwise we would punch them.

Q. She only punched them when it was overtime?

A. Yes.

Q. Would she punch it showing the overtime you worked?

A. The bookkeeper would do it.

Q. Would you be notified of the overtime you worked?

A. I would keep my own record.

Q. You would be paid for it?

A. Yes.

Q. I show you a card and ask you what it is?

A. That is my application blank.

Q. That you signed for the Union?

A. Yes.

MR. MOSCOVITZ:

Mark it for identification, please.

(Document referred to marked for identifica-

tion, Board's exhibit number three, witness Rice).

BY MR. MOSCOVITZ:

Q. I show you Board's exhibit number three, marked for identification. Do you say that is your application blank to the Union?

A. Yes.

Q. In whose handwriting?

A. This is in Mr. Posner's handwriting and it is signed by me.

Q. Did you make it all out or did he make it all out?

MR. GIROFSKY:

The witness has already answered the question, and I object to it.

BY MR. MOSCOVITZ:

Q. How about the other side?

A. He asked the questions and I answered them.

Q. Is that your signature?

A. Yes.

MR. MOSCOVITZ:

I introduce that.

MR. GIROFSKY:

I object to this offer, Your Honor, it has not been properly proved. The witness has testified that she has signed this card, but to the other features of it, it seems it was in the handwriting of someone else.

MR. MOSCOVITZ:

She also testified that she answered the questions which he asked her.

TRIAL EXAMINER GATES:

I think it is clear on that.

MR. MOSCOVITZ:

It seems to me that it makes no difference.

Mr. Examiner. The witness has testified that Mr. Posner asked her questions, he wrote down the questions and she signed the card. It seems to me a regular procedure.

MR. GIROFSKY:

I am accepting my privilege of cross examining this witness on this card for the purposes of my objection.

Recross Examination

BY MR. GIROFSKY:

Q. Do you know you are under oath?

A. I do.

Q. When did you sign this card?

A. When?

Q. Yes.

A. In Mr. Posner's office.

Q. When?

A. Either the 14th or the 15th.

Q. Do you know?

A. I am not sure.

Q. Did you sign any other cards or applications?

A. No.

Q. Did you write out this entire card?

A. Mr. Posner—

MR. MOSCOVITZ:

Witness has already testified.

TRIAL EXAMINER GATES:

The witness has testified. The question is not permitted.

MR. GIROFSKY:

This is examination, Your Honor, and I believe it is proper.

MR. MOSCOVITZ:

When does examination stop?

MR. GIROFSKY:

All right.

BY MR. GIROFSKY:

Q. Did you write out this entire card on the face?

A. I signed my name. Mr. Posner asked me questions and I answered them.

Q. Nothing more than that?

A. What do you mean "nothing more"?

Q. You didn't sign anything more than your name to this card?

MR. MOSCOVITZ:

The witness has testified four times on this.

Mr. Girofsky, and I ask that it be stopped.

BY MR. GIROFSKY:

Q. You signed nothing more than your name to this card; is that right?

MR. MOSCOVITZ:

That is the answer "yes".

A. Yes.

Q. Will you write your name for me, please?

(Witness does so).

Q. Didn't you write your name at the top too?

A. No.

Q. Did you write that name?

A. Yes.

Q. Did you write this address?

A. No.

MR. GIROFSKY:

I object to the offer, if Your Honor please. This card is offered as a card in evidence, prepared by someone else, partly by someone else.

as appears by the examination. I feel that the card has not been completely qualified.

TRIAL EXAMINER GATES:

It is admitted.

MR. GIROFSKY:

Exception.

(Document referred to received in evidence, marked Board's exhibit number three, Witness Rice).

MR. GIROFSKY:

Will you please remain in court, Miss Rice?
(Witness excused).

TRIAL EXAMINER GATES:

We will have a five-minutes' recess.

AFTER RECESS

LORRAINE HEITZ, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

BY MR. MOSCÓVITZ:

Q. Where do you live, Miss Heitz?

A. 189 West Main Street, Somerville, New Jersey.

Q. Are you employed at the present time?

A. No, I am not.

Q. Who was your last employer?

A. Mr. Fainblatt, Somerset Manufacturing Company.

Q. And have you been employed since your last work with Mr. Fainblatt?

A. No, I have not.

Q. When did you go to work for Mr. Fainblatt?

A. April 17, 1935.

Q. What kind of work did you do?

A. I worked as a floor girl, a trimmer.

Q. Trimmer?

A. Yes.

Q. What does a trimmer do?

A. Well, we didn't only trim, we trimmed a garment and sometimes I folded, sometimes I buttoned up work and laid them in sizes. Put them in sizes, trimmed them and well, whatever had to be done, inspected them, if there was anything wrong with them. We sent them back upstairs.

Q. And is trimming work that is done preliminary to the final job?

A. It is done before the folding.

Q. And shipping?

A. Yes.

Q. And is it done before sewing or after sewing?

A. After sewing.

Q. Does that put the garment in its finished condition?

A. Yes. Then it is all finished unless we have to put belts or bows on a dress or something of that sort.

Q. I see. And until what date did you work for Mr. Fainblatt?

A. Until August 21st.

Q. When did you join the Union?

A. On August 21st.

Q. You joined the Union August 21st?

A. Yes.

Q. And that was the last day you worked?

A. Yes.

Q. Before joining the Union, did you attend any union meetings?

A. The first meeting was on August 21st, and that is when I joined.

Q. Now, before that meeting, had you spoken with Mr. Posner?

A. No.

Q. Were you one of the girls that went to see Mr. Posner?

A. No, I knew about them going. I had spoken to them about it, but I didn't go with them when they left.

Q. You were interested in an organization?

A. Yes.

Q. You were interested in seeing an organization come about?

A. Yes.

MR. GIROFSKY:

I object to that.

MR. MOSCOVITZ:

The question is answered.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. Had you ever spoken with anyone of your supervisory bosses about the Union before you joined?

A. No, I did not. I was questioned by the foreman.

MR. GIROFSKY:

The answer has already been given, Your Honor.

Q. Did any one of your bosses speak to you about the union before August 21st?

A. Mr. Ruby, the foreman.

Q. Any others?

A. No, that is all.

Q. What did Mr. Ruby say to you?

MR. GIROFSKY:

I object to this, Your Honor, unless counsel fixes a date.

MR. MOSCOVITZ:

I will withdraw the question.

BY MR. MOSCOVITZ:

Q. Do you remember when it was that Mr. Ruby spoke with you?

A. I don't know the exact date, but it was about a week before the first meeting.

Q. A week before August 21st?

A. Yes.

Q. Was it in the plant?

A. Yes.

Q. Was it during working hours?

A. Yes, it was.

Q. Were you working at the time?

A. Yes.

Q. Were any other girls with you?

A. No, I was taking—

Q. You were alone?

A. I was on the elevator.

Q. I see, and did Mr. Ruby approach you?

A. Yes.

Q. What did he say?

MR. GIROFSKY:

I object to this question as improper. It is hearsay.

TRIAL EXAMINER GATES:

I don't think it is hearsay. Objection overruled.

MR. GIROFSKY:

It was not said in the presence of respondents.

TRIAL EXAMINER GATES:

No difference. Objection overruled.

MR. GIROFSKY:

Exception.

A. I had a load of work, taking it down on the elevator and Mr. Ruby came over and stopped the elevator and he said he wanted to ask me a few questions. He asked me if I had heard anything about the girls joining a union and he asked me if I was interested in it, and he asked me several questions about the union and I told him I had no information to give him. He told me that I don't need to be afraid that I wouldn't be sorry for any information given to him, and I told him I was sorry, that I had no information for him, and he said, "All right, go on with your work".

Q. Just what does Mr. Ruby do in the plant, if you know?

MR. GIROFSKY:

I object to any testimony pertaining to Ruby's activities. It is entirely hearsay.

MR. MOSCOVITZ:

It is not hearsay, if this witness knows.

MR. GIROFSKY:

It is immaterial, irrelevant, has no bearing on the case.

TRIAL EXAMINER GATES:

I think it is very material. Objection overruled.

MR. GIROFSKY:

Answer:

A. Mr. Ruby didn't have anything to do with

my work. He was foreman to the girls that operated the machines.

Q. He was their boss?

A. Yes.

Q. He supervised their work?

A. Yes, he and Miss Evans.

Q. He and Miss Evans?

A. Yes.

Q. Now, by supervising their work, just what do you mean?

A. Well, he gave them the work to do. He told them how to do it, what to do.

Q. Now was there anyone in the plant, above Mr. Ruby, aside from Mr. Fainblatt, to your knowledge?

A. No.

Q. Then, he was your boss, with the exception of the other boss, Mr. Fainblatt?

A. Yes.

Q. Now, after you spoke with Mr. Ruby, or after he spoke with you, which you placed in the testimony as a week prior to August 21st, did you have any other conversation with either Mr. Ruby, the forelady, or Mr. Fainblatt?

A. Not pertaining to the Union.

Q. Not pertaining to the Union. Was it the day that Mr. Ruby spoke with you about the Union, the day that the mayor spoke at the plant?

A. It was either the day that he spoke or shortly before, maybe a day or two before the mayor spoke.

Q. I see. Then it was during this period which appears to have been a concentrated drive of some sort?

A. Yes.

MR. GIROFSKY:

I object to counsel's remarks and counsel's leading question, and ask that it be stricken.

MR. MOSCOVITZ:

Of course, the question has been answered.

TRIAL EXAMINER GATES:

I will let that stay, but I caution counsel to avoid that.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. What happened on August 21st, 1935?

A. Well, several things happened. The mayor made a speech.

MR. GIROFSKY:

I object, unless this question is limited to this witness, limiting the question to the activities of this witness.

BY MR. MOSCOVITZ:

Q. Of course, insofar as you know yourself.

(Question read to the witness).

TRIAL EXAMINER GATES:

Re-phrase your question to conform with the objection.

BY MR. MOSCOVITZ:

Q. Anything happen to you on August 21st, 1935?

A. Well, I was discharged from Mr. Fainblatt's employ, for one thing.

Q. Anything else?

A. I saw the mayor come in and Mr. Hawley, and they went upstairs, but we were not invited to go up.

Q. Who do you mean?

A. The floor girls.

Q. How many of them?

A. I don't remember the exact number that were working, but Ethel Rice, Sophie Ziegler, Mary Grill, and myself, and I think that was all that were working that day.

Q. I see. You were not asked to go up?

A. No.

Q. The balance of the workers there were invited?

A. Yes.

Q. Now, you say that Mr. Fainblatt discharged you on that day?

A. Yes.

Q. Will you explain to the Trial Examiner what took place at that time?

A. Well, we had to work overtime that night.

Q. You were busy?

A. Quite busy.

Q. Yes.

A. And we worked until around six o'clock, I think, and Mr. Fainblatt walked over to us and at that time—

MR. GIROFSKY:

Your Honor, please, I ask that the witness be instructed to confine her answers to her own experiences.

TRIAL EXAMINER GATES:

I think that is her experience.

MR. MOSCOVITZ:

She was there with other people apparently.

MR. GIROFSKY:

She has not designated the other persons.

BY MR. MOSCOVITZ:

Q. What other persons were with you?

A. Ethel Rice and myself.

Q. And Mr. Fainblatt came over?

A. Yes, Mr. Fainblatt came over to us and previous to that we had been coming in, well, sometimes nine o'clock in the morning, sometimes ten, sometimes we wouldn't come in until noon time, so we usually formed the habit of asking him the night before we left, what time to come in on the next day, so when he came past, Ethel Rice said, "Mr. Fainblatt, what time shall we come in in the morning?"—meaning Ethel Rice and myself, and he looked at us and said, "I am sorry, girls, there is no work for you", and we looked at him because there was more work there than for three months, so we asked him why not, and he said, "I have no more work for you girls, you will have to go to the Union". So we looked at him and we walked out. The next day we went back for our pay, and when we went there I said, "Mr. Fainblatt, have you any work for us?" and he said, "I told you girls once before I have no more work for you." and he opened the door for us and said, "See, there is nobody working here," and when we came in to the place the girls up on the third floor were waving out of the windows to us.

Q. So they were girls who had previously been working on the other floor?

A. Yes, they had been working on the ground floor.

Q. The day you came in they were on the third floor?

A. Yes.

Q. And before you came in, they waved to you?

A. Yes.

Q. So when Mr. Fainblatt said to you, "You see, girls, nobody is working on this floor," he was right in saying that?

A. Yes, there was no one working on the floor, but they were working.

MR. GIROFSKY:

I think this testimony is sufficient for the record without counsel substituting for her.

TRIAL EXAMINER GATES:

The record is clear.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. And after he opened the door and showed you the space, did he say anything further to you?

A. No, he did not.

Q. Make any further reference to the Union?

A. No.

Q. You left?

A. Yes.

Q. Did you come back any time after that to see Mr. Fainblatt?

A. We had to go back once more for our pay, for the three days of that week that we had worked, that was the following Thursday.

Q. Did you go to see Mr. Fainblatt?

A. He was not there.

Q. Any further reference by anyone else to the union to you?

A. We were paid by Miss Lee.

Q. Who is Miss Lee?

A. Mr. Fainblatt's daughter.

Q. You worked for Mr. Fainblatt during the

N. R. A.?

A. Yes.

Q. Were you doing the same kind of work?

A. Yes, I was.

Q. Were you working on an hourly rate or a weekly wage?

A. Hourly rate.

Q. What was your hourly rate?

A. Twenty-four cents an hour.

Q. During the N. R. A.?

A. Yes.

Q. How many hours were you working?

A. Forty, that is, we worked overtime sometimes too.

Q. You also worked overtime?

A. Yes.

✓ Q. You received the same hourly rate for overtime?

A. Yes.

Q. And after the N. R. A., you continued to work for Mr. Fainblatt?

A. Yes, I did.

Q. Did you continue on an hourly rate?

A. Yes.

Q. Did you receive the same hourly rate?

A. No.

Q. What was it, increased or decreased?

A. Decreased.

Q. Decreased to what?

A. To twenty-one cents an hour.

Q. How many hours a week were you working then?

MR. GIROFSKY:

What week?

MR. MOSCOVITZ:

After the N. R. A.

MR. GIROFSKY:

Does this mean every week following the N. R. A.?

BY MR. MOSCOVITZ:

Q. Did you work regularly every week following the N. R. A.?

A. No, we did not, at first we did, then we were working all hours.

Q. You mean what?

A. We would come in at noon time, work to the end of the day, or come in in the morning and work until noontime, or we would work overtime until six o'clock, and the next morning there would be no work, so we would come in at ten or eleven o'clock.

Q. Was that the manner in which your employment continued until the date of your discharge?

A. Practically.

Q. Working irregularly?

A. All the time irregularly from then to the time I was discharged.

Q. Can you tell me how many hours you would average a week after the N. R. A.?

A. Well, sometimes we would work pretty good.

Q. When you say "pretty good", you mean how many hours?

A. Well, thirty hours, sometimes a little more, but very seldom more than thirty-five hours.

Q. Yes.

A. And sometimes we would only get in twenty hours.

Q. Is that the lowest number?

A. I don't think we worked any less than that.

Q. You are not sure is that it?

A. I am not positive.

Q. But as far as you know, you would approximate between twenty and thirty-five hours over this period of time in an irregular manner?

A. Yes.

Q. But you are definite about the hourly rate; is that it?

A. Yes.

Q. Now, before the expiration of the N. R. A., when you were receiving the higher hourly rate, you had been working regularly?

A. Yes.

Q. Had you been notified by Mr. Fainblatt that your wages were going to be decreased when they were decreased?

A. No.

Q. And what happened?

A. Well, they were decreased twice, the first time I think the office girl told us—

MR. GIROFSKY:

I object to what this witness thinks.

BY MR. MOSCOVITZ:

Q. Who is the office girl?

A. Jean Sanders, the office girl told us about two days before pay day.

MR. GIROFSKY:

I object to any conversations with an office girl. It is hearsay.

TRIAL EXAMINER GATES:

It is in the regular course of business, the witness may answer. Objection overruled.

MR. GIROFSKY:

Exception.

A. The office girl usually did tell us about such matters. She told us that all the floor girls had been cut to twenty-one cents an hour. Then there was a second cut after that, and this cut we didn't have any knowledge of whatsoever until we got our pay, and this time we had been cut three cents on an hour and we received our pay and found that

we were short, so I went to the office girl. I asked her why. She said, "You have been cut three cents on an hour", and I asked her why, and she said she didn't know, and I asked her if she was supposed to have given us notice of it, and she said "No".

MR. GIROFSKY:

I object to this, Your Honor, and ask that it be stricken on the same grounds as before.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Exception.

A. So, we went up to Mr. Fainblatt and asked him why we had been cut three cents on the hour without being notified, and Mr. Fainblatt's answer was that there was no more N. R. A. and he could pay us whatever he chose, and that he could get girls to do our work for five dollars a week, and if we were not satisfied to work for what we were getting, why, we could go home.

Q. So that after the series of cuts and the irregular employment that came with it, you then decided to organize to protect yourselves: is that it?

A. Yes.

MR. GIROFSKY:

I object to counsel's question, and ask that it be stricken from the record, as not a question.

TRIAL EXAMINER GATES:

I will let it stay.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. Miss Heitz, I show you Board's exhibit number four, marked for identification. Can you tell me what it is?

A. That is the card I signed to join the Union.

Q. An application card?

A. Yes.

Q. In whose handwriting is it?

A. It is all in my handwriting.

MR. MOSCOVITZ:

I offer it.

MR. GIROFSKY:

I wish to examine this witness first with respect to this card.

TRIAL EXAMINER GATES:

Very well.

Cross Examination

BY MR. GIROFSKY:

Q. This is your handwriting?

A. Yes, it is.

Q. You are married?

A. Yes.

MR. GIROFSKY:

I have no objection.

TRIAL EXAMINER GATES:

It is received.

(Document referred to received in evidence, marked Board's exhibit number four, Witness Heitz).

BY MR. GIROFSKY:

Q. You worked until August 21st, 1935?

A. Yes, I did.

Q. And you did not work thereafter?

A. No, I did not.

Q. So that the charge in the complaint that you worked until September 18th, 1935, is not correct; is that so?

A. It is not so.

MR. MOSCOVITZ:

The complaint says August 28th, 1935.

BY MR. GIROFSKY:

Q. Now, Mrs. Heitz, your duties at the plant were rather light, just trimming with a scissors, these few garments each day that you did report; isn't that so?

A. I did other things besides trimming garments.

Q. But you did perform that work, that did not require your presence on the plant's premises for any more than four or five hours a day; isn't that so?

A. No, that is not so. Trimming was done all day long.

Q. But on many occasions during your employment there, you reported to work at ten o'clock in the day?

A. When I did, why, all the floor girls did the same thing.

Q. We are just speaking about you now. You reported on many occasions at ten o'clock in the morning?

A. After the N. R. A. went out of existence, yes.

Q. And on some of those occasions you left before five o'clock; isn't that so?

A. Very seldom. When we came in at ten o'clock we usually left at five or later.

Q. But you did on many occasions; didn't you?

A. I wouldn't say that.

Q. Did you leave at any time before five?

A. If we came to work in the morning—

Q. Just yourself.

A. Well, if I came to work in the morning at eight o'clock, sometimes we would finish up the

work, or there would be no more work, we would be all sent home at four o'clock.

Q. So that you didn't work an entire day on many occasions; isn't that so?

A. Yes.

Q. And you were just paid on an hourly basis?

A. Yes.

Q. Now, when you received your first cut, you say you were notified?

A. Yes.

Q. By the office girl?

A. Yes.

Q. How much were you making just before the cut?

A. An hour?

Q. An hour.

A. Twenty-four or twenty-four and a half, I don't know exactly.

Q. You are not certain?

A. Either twenty-four or twenty-four and a half cents an hour.

Q. How much did you receive after you heard you were going to be cut?

A. Twenty-one cents.

Q. How long a period of time was it from the time you got your first cut to the time you say you received the second cut?

A. I am sorry, I can't tell you exactly, but it was about three weeks.

Q. About three weeks. And you continued working there after you received the first cut; isn't that right?

A. Yes.

Q. You had not seen Mr. Fainblatt about the cut, had you?

A. No.

Q. And you did not speak with him about it?

A. No.

Q. And you say you received a second cut?

A. Yes.

Q. How much?

A. Three cents.

Q. How much did you receive after you received the second cut?

A. Eighteen cents an hour.

Q. How many hours a day did you work?

A. About six hours a day.

Q. Some days you worked less?

A. Some days more, some days less.

Q. You always got paid for your work, did you?

A. Yes.

Q. There never were any errors, were there?

A. No.

Q. And getting down to the 21st of August, what time did you leave the plant?

A. Well, I worked overtime that night. I don't know exactly how long it was.

Q. How long did you work after you received the second cut, Mrs. Heitz?

A. I don't know how long it was after the second time.

Q. Would you say it was four weeks, Mrs. Heitz?

A. No, it was not as long as that.

Q. Two weeks?

A. It would be closer to two weeks than to four.

Q. It might have been three?

A. No.

Q. You continued to work under that second cut, didn't you?

A. Yes.

Q. And did you complain to Mr. Fainblatt or tell Mr. Fainblatt that you would not work at that rate?

A. Mr. Fainblatt had already told me that if I didn't want to work for that, I could quit.

Q. Did you quit?

A. No.

Q. Were you satisfied to work?

A. I was not satisfied, no.

Q. Why did you remain there?

MR. MOSCOVITZ:

Answer the question.

A. Well, five dollars a week is better than nothing.

BY MR. GIROFSKY:

Q. You were satisfied then; is that right?

A. No, I was not satisfied. I can do a thing and not be satisfied with it.

Q. Did you, at that time, were you seeking employment elsewhere?

A. No.

Q. After you had received the second cut?

A. No, I was not.

Q. Why weren't you seeking employment elsewhere?

A. Well, at that time we girls were talking about—

Q. Just yourself.

A. I was not talking with myself.

Q. Just talk about your own activities, Mrs. Heitz, please.

A. I can't tell you.

Q. I am trying to be fair with you now.

A. I can't tell you what I did when I was engaged in doing it with someone else.

Q. You didn't seek employment elsewhere?

A. No, I did not.

Q. Now, since August 21, 1935, you have been unemployed?

A. Yes.

Q. And are you receiving any wages from anyone?

A. I get five dollars a week from the Union.

Q. Are you satisfied with the receipt of five dollars a week at the present time from the union?

A. I am satisfied temporarily.

Q. Temporarily?

A. Yes.

Q. And just as you were satisfied with five dollars a week from Mr. Fainblatt; is that right?

A. No, I consider this an entirely different thing.

Q. A different thing?

A. When I was working for Mr. Fainblatt, that was to go on indefinitely.

Q. And is this Union work to go on definitely, or indefinitely?

MR. MOSCOVITZ:

Does Mr. Girofsky mean Union relief pay?

MR. GIROFSKY:

Union work or relief, whatever you characterize it.

MR. MOSCOVITZ:

I think it should be characterized properly by counsel. I have never heard of it called union work. It might have been union relief pay.

TRIAL EXAMINER GATES:

Answer the question.

A. I am not doing any Union work.

Q. You are not doing anything?

A. No.

Q. Have you sought employment anywhere since August 21st, 1935?

A. No.

Q. You have not?

A. No, I have not.

Q. You have not sought employment anywhere, have you?

A. No.

Q. (Omitted.)

A. Well, as I understand it, we are on strike to try to go back to work in the factory under better conditions and I waited to see the outcome of this before I start looking for employment anywhere else.

Q. How long are you willing to wait?

MR. MOSCOVITZ:

Mr. Examiner, I object to that question.

MR. GIROFSKY:

It goes to the motive.

TRIAL EXAMINER GATES:

I think she may answer.

BY MR. GIROFSKY:

Q. How long are you willing to wait?

A. As long as necessary.

Q. And you are satisfied then to receive five dollars a week indefinitely; is that so?

A. But I know it won't be indefinitely.

Q. Just answer yes or no.

A. (No answer).

Q. Who told you it would not be indefinite?

A. Mr. Posner.

Q. So that what you are doing is relying on the promises of Mr. Posner as to what he can do for you; isn't it?

A. No.

Q. He is the only one that told you it would not be indefinite; isn't it?

A. Mr. Posner didn't tell us anything about whether it would be indefinite or not.

Q. What did he tell you?

A. About what?

Q. About the strike conditions, about re-employment.

A. Well, if we wanted him to, Mr. Posner would place us in union factories.

Q. Has he placed you in union factories?

A. He has not placed me because I have not requested it, but he has placed other girls.

Q. He has placed other girls?

A. Yes.

Q. Then whether or not you are employed isn't a very serious matter with you at the present time?

A. Not right at the moment.

Q. When was the first meeting you attended?

A. August 21st.

Q. The very day you left the plant in Somerville? The Somerset Manufacturing Company?

A. The day I was discharged.

MR. MOSCOVITZ:

The day she was discharged, according to her testimony.

MR. GIROFSKY:

Mr. Moscovitz, this is my witness, for the moment.

TRIAL EXAMINER GATES:

The record is specific.

BY MR. GIROFSKY:

Q. What time of the day was the meeting?

A. The Union meeting? Five-thirty. It was supposed to be called at five-thirty.

Q. When were you notified to attend the meeting?

A. When was I notified? I was one of the girls that set the day of the meeting.

Q. When was your first union activity?

A. What do you mean by "union activity"?

Q. As I understand, you joined the Union the 21st; is that right?

A. Yes. That is the day—

Q. You are sure you joined on the 21st?

A. Yes.

Q. The day you joined is the day you signed this application card, marked exhibit number four, by the Board?

A. Yes.

Q. You want to stand on that day?

A. Yes.

Q. You say, you told me before, that you joined on the 21st?

A. Yes.

Q. You are sure it was on the 21st?

A. Yes.

MR. MOSCOVITZ:

If Mr. Girofsky doesn't extend courtesy to counsel when it is our exhibit—

BY MR. GIROFSKY:

Q. Will you read the date on this exhibit? What is that figure? I am pointing to the date on exhibit number four.

A. Yes.

Q. You joined on the 28th, after you were out of the employ or not working at the plant; isn't that so?

A. Yes, I was discharged on the 21st and it was after I left the factory and went up to the meeting

that I signed the card.

Q. Who was at the meeting?

A. About twenty-five of the workers.

Q. Where was the meeting?

A. Up in Raritan.

Q. Who was there besides the workers?

A. Mr. Posner.

Q. Who called that meeting?

A. Well, I wouldn't say it was exactly called.

Q. Who notified you to attend the meeting?

A. Ethel Rice.

Q. Was Mr. Posner there?

A. No.

Q. Who was present at that meeting?

A. The meeting of August 21st?

Q. Yes.

A. Mr. Posner and about twenty-five of the girls.

Q. You mean the meeting on the 28th?

A. No, I mean the 21st.

Q. The 21st?

A. Yes.

Q. You were not a member of the Union, were you?

A. I joined on the 21st.

Q. You joined on the 21st?

A. Yes.

Q. You told me a moment ago you joined the day you signed the card, which is dated the 28th—which is right?

A. Well, I made out this card on the 21st of August.

Q. How do you account for the date of it being the 28th on there and your signature under it?

A. I don't know how that happened.

Q. Now, who were the girls present at that meeting?

A. Is it necessary to name them all?

Q. I would like to know.

A. I can't name them all.

Q. I want to know who the girls were?

A. I can name some; but I can't name all of them.

Q. All right, name those at the meeting that you can.

A. Ethel Rice; Fay Katz; Theresa Yemma; four pressers, Josephine—

Q. Four pressers?

A. Yes.

Q. What are their names?

A. Mayme, Josephine, Gertrude and there is another one—I don't know what her name is—I don't know her very well.

Q. Do you know any others?

A. Then there was Elizabeth and Mary Gecik, and Mary Denko, Angelina Matteis; and there were several others, but I was not very well acquainted with the operators because I never worked with them. I worked downstairs.

Q. And that is all you can remember now?

A. That is all I can remember of the names.

Q. Did you stop and count them that day?

A. No, I did not.

Q. Was that at the meeting that Mr. Posner was authorized to represent you?

A. It was.

Q. When was the next meeting?

A. August 28th.

Q. August 28th?

A. Yes.

Q. How many were at that meeting?

A. About thirty-five.

Q. That is the first meeting you attended, isn't it?

A. No, between the first and second meetings, I know I was not working because I visited the homes of many of the girls and waited for them after the factory and some of the other girls did the same thing, and that is how the increase in the number occurred between the first and second meetings.

Q. Did you count them at that second meeting?

A. No, I did not count them.

Q. Do you remember the names of those present?

A. The same ones that I mentioned and several more. I don't remember their names.

Q. Was that the meeting at which the strike was called?

A. No.

Q. When was the next meeting?

A. The next meeting was September 5th.

Q. Where was it held?

A. The same place.

Q. Where is that?

A. In Raritan.

Q. And how many were present?

A. About thirty-five.

Q. Thirty-five. Did you count them?

A. No.

Q. And who was present?

A. The same girls I mentioned before.

Q. Was that the meeting at which the strike was called?

A. No.

Q. When was the next meeting?

A. Well, I don't know whether there was a meeting after that. I know there was one more meet-

ing, that was the night before the strike was called.

Q. You were there?

A. Yes.

Q. How many people were there?

A. The same number as at all the other ones.

Q. Did you count them?

A. No.

Q. Who were those people?

A. Well, outside of the ones I have already named, I don't think I can name any other ones.

Q. Then, all of the meetings that you attended, the number that you give is simply your guess or approximation?

A. Yes.

Q. Nothing more?

A. No.

Q. That is all. Have you paid any dues?

A. No.

TRIAL EXAMINER GATES:

Before the witness leaves, there are two or three questions I would like to ask and also one matter I would like to have in the record, either by testimony from the witness, or have you put it in just as a statement of counsel, and that is the pay periods of the company, whether they pay by the week, or how.

MR. GIROFSKY:

Do you want me to take this witness on the number of hours of work each week?

TRIAL EXAMINER GATES:

The company practice.

MR. WHARTON:

Monday through Friday is the period for which they are paid. They are paid on the following Thursday. The basis upon which the

workers are paid varies, some being paid by the week, others by the hour, and others by piece.

Examination

BY TRIAL EXAMINER GATES:

Q. Mrs. Heitz, on the question of time here, if you left the employment on August 21st and also joined the Union on August 21st, which occurred first?

A. I left the factory first, from the factory I went to the meeting and there joined the Union.

Q. You joined the Union, however, after your interview with the employer?

A. Yes.

Q. That is all.

BY MR. GIROFSKY:

Q. Since your questions, Mr. Examiner, I would like to continue on.

TRIAL EXAMINER GATES:

My questions, frankly, occurred to me before this discrepancy was brought out. I would just as soon counsel proceed in orderly manner.

Redirect Examination

BY MR. MOSCOVITZ:

Q. Now, it is clear, as I understand it now Mrs. Heitz, that your relationship with the company was severed on the 21st of August?

A. Yes.

Q. But after that, which would be that evening, you joined the Union?

A. Yes.

Q. Was it before the 21st of August that you had the conversation with Mr. Ruby?

A. Yes.

MR. GIROFSKY:

I object to this, Your Honor, this is all improper. Counsel has gone into this.

TRIAL EXAMINER GATES:

Objection sustained.

MR. MOSCOVITZ:

That is all.

Recross Examination

BY MR. GIROFSKY:

Q. This date on exhibit number four, introduced by the Board, is in your handwriting; isn't it Mrs. Heitz?

A. That date is not in my handwriting. My signature and all the rest is.

Q. Under that date?

A. Yes.

BY MR. MOSCOVITZ:

Q. This card that is in evidence, under your signature, is dated the 28th of August. Was that the date of the second union meeting?

A. Yes, it was.

Q. And you attended the first Union meeting on August 21st?

A. Yes.

Q. Are you sure whether or not you signed that card the first Union meeting or the second Union meeting?

MR. GIROFSKY:

I object to this question, Your Honor, the card speaks for itself, and has been gone thoroughly into with the witness. The date is on the card.

TRIAL EXAMINER GATES:

I would like to see if there is an explanation for this discrepancy.

MR. GIROFSKY:

There is no discrepancy, Your Honor. She said she signed it as it is. The Board introduced it. Unless the Board wants to impeach its own witness, I don't think this should be gone into further.

MR. MOSCOVITZ:

Not for a minute. This is an effort to determine whether she signed it at the second or the first meeting.

MR. GIROFSKY:

I submit this question is improper unless he wishes to neutralize the testimony of his own witness.

MR. MOSCOVITZ:

The question is whether or not a person was discharged because of her union activities, not when they pay their fees, or sign an application. I am perfectly willing to rest on the witness' story, but I would like very much for the purpose of clarification of the record, to ascertain whether or not there is something that happened on the 21st, insofar as signifying her intention to join, or whether she actually joined on the 28th.

MR. GIROFSKY:

I think that the card introduced by the Board sets up a state of facts. It is an admission by the Board. It is binding on the Board, and if counsel wishes to neutralize the testimony of this witness, I have no objection.

MR. MOSCOVITZ:

I do not wish to neutralize it.

TRIAL EXAMINER GATES:

All right.

BY MR. MOSCOVITZ:

Q. You attended the meeting August 21st?

A. Yes.

Q. Do you know whether or not you signed the card at the first meeting or the second meeting?

A. I can tell you what happened in the case of the card. At the first meeting there were only twenty-five girls there, and we were handed these cards and we filled them out. We put our names and addresses. We put our names and address but we didn't put on our age and sex and trade, and at the second meeting, the 28th, he handed the cards back to us and included the other girls that came to the last meeting and we filled out the rest of the cards. We filled out the age and the occupation and I put my name at the top. The first week, I only put it at the bottom.

BY MR. GIRONFSKY:

Q. Are they the only two meetings at which cards were signed?

A. That is when the majority of them were signed, but some were signed before that. Some of them were not even signed at the meeting.


Q. You didn't become a member until the 28th by actually signing your signature to a card? Is that right?

A. I signed my signature to the bottom of that card on the 21st.

Q. With the date on this card as the 28th?

A. There was not any date fixed to the card at that time.

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Q. No date affixed to the card?

A. No.

Q. Is that your explanation?

A. Yes.

Q. You are willing to rest on it?

A. Yes, I am.

TRIAL EXAMINER GATES:

We will recess until one-thirty.

(Thereupon at 12:25 a recess was taken until 1:30).

AFTER RECESS

FAY KATZ, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

BY MR. MOSCOVITZ:

Q. Where do you live?

A. 23 Vanderveer Avenue, Somerville.

Q. Were you employed by the Somerville Manufacturing Company?

A. Not right now.

Q. Were you?

A. Yes.

Q. When did you go to work for the company?

A. The last part of December, 1934.

Q. And you worked until what date?

A. September 16, 1935.

Q. And are you one of the striking employees at the present time?

A. Yes.

Q. Have you been employed since that date?

A. Yes, I have.

Q. Since your discharge?

A. Yes.

Q. By whom?

A. Do you mean in Mr. Fainblatt's place?

Q. Have you been employed any place?

A. Yes, I have.

Q. Where?

A. Plainfield.

Q. And are you employed at the present time?

A. No.

Q. By whom were you employed in Plainfield?

A. Mr. Posner placed me.

Q. How long did you work there?

A. I worked there a week.

Q. How much did you work for that week?

MR. GIROFSKY:

I object to this. It does not have any bearing on the issue.

TRIAL EXAMINER GATES:

I think it does. Objection overruled.

BY MR. MOSCOVITZ:

Q. How much did you make for the week?

A. I went in there one afternoon and worked a full week and I made something over fifteen.

Q. For how many hours?

A. Well, we only worked from eight-thirty to four-thirty.

Q. Five days?

A. I worked four and a half.

Q. All right. That is the only period you have been employed since then?

A. Yes.

Q. What work were you doing for Mr. Fainblatt?

A. I made ski pants, skirts, and in the summer work, slacks, shorts, blouses and halters.

Q. Were you a trimmer, a finisher or what?

A. No.

Q. What were you called?

A. An operator.

Q. An operator. Were you employed on an hourly rate or a weekly salary?

A. Piece work.

Q. Paid by the dozen?

A. Yes.

Q. What would your piece rate be at the time of your discharge?

A. The last pay I got was two dollars and ninety-five cents.

Q. A dozen?

A. Oh, well, for ski pants, we were getting ninety-eight cents, and then we got sixty-three cents a dozen for them.

Q. Now, were you working on that particular article?

A. Yes.

Q. At the time of your discharge?

A. Yes.

Q. And what were you getting then?

A. Sixty-three cents a dozen.

Q. Sixty-three cents a dozen. Now, you say you had gotten a different rate prior to that?

A. We got ninety-eight cents during the N. R. A.

Q. And then after the N. R. A., were you cut?

A. To sixty-three cents.

Q. And that is what you were getting at the time you left?

A. Yes.

Q. Did you work according to the number of hours also?

A. I don't know what you mean by that.

Q. How many hours did you work during the week?

A. Well, at times I worked forty hours and when it was slack we worked three or four hours less.

MR. GIROFSKY:

I wish counsel would make the time definite in his questions.

MR. MOSCOVITZ:

I wish, if the witness will give me an approximation, an approximate average of the number of hours worked from the time of the expiration of the N. R. A. until her discharge by the company.

MR. GIROFSKY:

I submit that is improper, Your Honor. I feel counsel should lay a foundation for that question.

TRIAL EXAMINER GATES:

I thought a foundation had been laid.

MR. GIROFSKY:

Ask this witness how many hours she worked the first week after the N. R. A.

TRIAL EXAMINER GATES:

Objection sustained.

BY MR. MOSCOVITZ:

Q. Did you work regularly after the N. R. A., or irregularly?

A. Most of the time I did work regularly.

Q. And when you say regularly, what do you mean?

A. Forty hours a week.

Q. And that was after the N. R. A.?

A. Yes.

Q. Then you say most of the time you worked forty hours a week?

A. Yes.

Q. When didn't you work forty hours a week?

A. It was around three or four weeks before I was discharged.

Q. That was the first time there had been any difference in the number of hours you worked?

A. Yes.

Q. How many hours a week did you work then?

A. Twenty-eight hours, sixteen hours, twenty hours, thirty-five.

Q. And during the period when you were working forty hours a week, what was your weekly income?

A. Seven or eight dollars.

Q. And—

MR. GIROFSKY:

That is on the forty hour week?

MR. MOSCOVITZ:

Yes, the regular week.

BY MR. MOSCOVITZ:

Q. Is that right?

A. Yes.

Q. And when your hours were decreased three or four weeks before your discharge, what did you get?

A. I got three dollars and thirty-eight cents for twenty-eight hours.

MR. GIROFSKY:

For twenty hours or the amount of work she did? That is, for the amount of work she did in twenty-eight hours?

MR. MOSCOVITZ:

The question has been asked. If you would like to cross examine her, you may do so.

BY MR. MOSCOVITZ:

Q. What were you getting at the time of your discharge?

A. You mean in—

Q. Your weekly income at the time of your discharge? Did you receive a check when you were discharged?

A. Two days after.

Q. Yes, and what was the check?

A. Two dollars and ninety-five cents.

Q. For how many hours?

A. I don't remember because I worked that Monday a half day before I was discharged and that was put on the last week, the time I did work, so I couldn't tell you exactly.

Q. When did you join the Union?

A. I joined August 21st.

Q. 1935?

A. Yes.

Q. Had you been engaged in any Union activities prior to that date?

A. Yes, I had.

Q. Had you been interested in becoming associated with a union before that date?

MR. GIROFSKY:

I object to what her interest might be.

TRIAL EXAMINER GATES:

I think the question is clear. It is admitted.

MR. GIROFSKY:

Exception.

A. When the girls spoke to me about it, I told them I would be interested.

BY MR. MOSCOVITZ:

Q. Certain girls spoke to you about it?

A. Yes.

MR. GIROFSKY:

I object to this, your Honor. It is hearsay.

TRIAL EXAMINER GATES:

I don't think so. It is admitted.

BY MR. MOSCOVITZ:

Q. Certain girls did come to speak to you. Do you remember who?

A. Yes, I do.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. Who?

A. Ethel Rice, a couple of other girls.

Q. This was before?

A. Yes.

Q. Do you remember how long before?

A. I think it was the day before.

Q. The day before. Did you know anything about union organization before that date?

MR. GIROFSKY:

I object to this, Your Honor.

TRIAL EXAMINER GATES:

On what grounds?

MR. GIROFSKY:

I withdraw the objection.

MR. MOSCOVITZ:

I withdraw the question.

BY MR. MOSCOVITZ:

Q. Had Mr. Fainblatt spoken with you about the Union?

A. No, he had not.

Q. Before August 21st?

A. No, he had not.

Q. Any one of your supervisory employees speak with you about the Union?

MR. GIROFSKY:

I object.

A. Miss Evans.

MR. GIROFSKY:

Just a minute—

MR. MOSCOVITZ:

I have not finished my question. You interrupted the answer, so I have to start right off again.

BY MR. MOSCOVITZ:

Q. Did any one of your supervisory employees speak with you about the union before August 21st, 1935?

A. Well, Miss Evans spoke to me on the day of August 21st.

Q. Anyone else?

A. No.

Q. Mr. Ruby?

A. No.

Q. Mr. Fainblatt?

A. No.

Q. And who is Mrs. Evans?

A. Well, she was the forelady.

Q. In your department?

A. Well, part of the time.

Q. Part of the time where was she?

A. Part of the time I worked for Mr. Ruby.

Q. And when you say she was a forelady, what did she do?

A. She told us what to do and how to do it.

MR. GIROFSKY:

I object to any testimony of conversations

with others not parties to these proceedings. It is hearsay.

TRIAL EXAMINER GATES:

Certainly I cannot object to agents of the respondents. The question is permitted.

MR. GIROFSKY:

This witness is not in a position to prove agency.

TRIAL EXAMINER GATES:

Please proceed.

MR. GIROFSKY:

I take an exception.

MR. MOSCOVITZ:

I am just putting in facts.

BY MR. MOSCOVITZ:

Q. Will you continue answering my questions?

A. What is the question?

Q. What were her duties in relationship to you?

A. She told us how to do things, she gave us the work and she marked our work for us.

Q. Was she your immediate boss?

A. Yes.

Q. Was there any other boss over her?

MR. GIROFSKY:

I object to this question, Your Honor.

BY MR. MOSCOVITZ:

Q. Don't you know?

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Exception.

A. Well, we had a new lot of skirts in, new style, and Miss Lee was in there and she was telling her how to do things, and she came over to us and explained them.

Q. Is that Marjorie Fainblatt?

A. We know her as Miss Lee.

Q. Who is Miss Lee?

A. Mr. Fainblatt's daughter.

Q. Is she in court?

A. No, she is not.

Q. Would Mr. Fainblatt say whether Miss Lee is Marjorie Fainblatt?

MR. FAINBLATT:

She is.

MR. MOSCOVITZ:

Mr. Fainblatt indicates that the witness' reference to Miss Lee is a reference to his daughter, Marjorie Fainblatt; is that correct, Mr. Fainblatt?

MR. FAINBLATT:

Yes.

MR. GIROFSKY:

Does Mr. Moscovitz want me to call Mr. Fainblatt to the stand? Do you want me to put him on?

MR. MOSCOVITZ:

Will you stipulate a fact if it is a fact?

MR. GIROFSKY:

Do your job, if it is your job.

MR. MOSCOVITZ:

Will you stipulate that it is a fact?

MR. GIROFSKY:

If it is your job, you are failing at it.

MR. MOSCOVITZ:

Don't hide behind these fancy verbiages. I understand Mr. Fainblatt's statement is in the record. Is there any objection to Mr. Fainblatt's statement that Miss Lee is his daughter, Marjorie Fainblatt?

MR. GIROFSKY:

I have no objection, but I think you ought to proceed regularly with it instead of doing it half way.

BY MR. MOSCOVITZ:

Q. Miss Katz, did anyone besides Miss Lee supervise your work?

A. There was one man from New York came in. He showed us how to do samples on the new snow suits. I think his name was Mr. Drake, I don't know.

Q. Was he there all the time?

A. He was there for quite a while.

Q. But Miss Lee was the regular supervisor—

A. She was there for two days. She came in and showed Mrs. Evans a new style of skirt, how they were to be done.

Q. Had you ever spoken with Mr. Ruby about the Union?

MR. GIROFSKY:

I object to any conversations with Mr. Ruby on the same grounds as my other objections.

TRIAL EXAMINER GATES:

Overruled.

BY MR. MOSCOVITZ:

Q. Did Mr. Ruby ever speak with you?

MR. GIROFSKY:

I object to that question as hearsay.

TRIAL EXAMINER GATES:

Overruled.

A. I don't think he has.

BY MR. MOSCOVITZ:

Q. When was the last day that you worked for the Somerset Manufacturing Company?

A. September 18th.

Q. What happened to you on that day?

A. Well, I had to finish some work for Friday and I went in Monday morning and I finished it at eleven o'clock, and Mr. Ruby kept me there until twelve o'clock.

Q. Who was he?

A. He was the foreman that I was working for at that time, and I just finished ski pants and he had the whole shelf full of skirts and I had worked on skirts before and he said, "I haven't any work for you, come in tomorrow morning and I will start you on skirts", and in the meanwhile he had given other girls skirts to work on that had not worked on skirts and I told him, "All right", and I went in the next day and Mr. Fainblatt wouldn't let me in the plant. He kept me in the office outside and he said, "I have no work for you". I said, "You gave the other girls work", and he said, "I don't owe you anything. If you want work you can go to the Union". So I went out.

Q. Now, before you were discharged, had you ever attended a meeting conducted by Mr. Fainblatt at which the question of union organization was raised?

A. Yes, I have.

Q. Do you recall when that was?

A. Yes, that was the day of the first meeting, August 21st.

Q. And where was the particular meeting held?

A. On the second floor where the operators are.

Q. In the company's plant?

A. Yes.

Q. Who were there?

A. The girls, they called all the girls together.

shut the power off at four-thirty and, had Mayor Hess and Mr. Hawley there.

Q. And what happened at that time?

A. Well, he introduced Mayor Hess first as a friend of his, and a friend of ours.

Q. When you say "he", do you mean Mr. Fainblatt?

A. Yes. Then Mr. Hess spoke and said that he heard we were trying to organize the shop and he said it was very foolish trying to organize the shop because our bread and butter is right there and there is too many people on relief as it is, and he don't want us on relief and he said Mr. Fainblatt would have nothing to do with the Union.

Q. Did he say whether or not he would stick behind Mr. Fainblatt?

A. He said yes, that he would stand behind Mr. Fainblatt.

Q. Now, was Mr. Adams there?

A. No, Mr. Adams was there on August 28th.

Q. Well, who else was there?

A. Mr. Hawley.

Q. Who is Mr. Hawley?

A. He is the insurance agent of the plant.

Q. Do you know where he lives?

A. No, I don't.

Q. Does he have an office in Somerville?

A. Yes.

Q. Where?

A. On Division Street.

Q. What building, the Central Building?

A. Yes, I think it is.

Q. And do you know which Mr. Hawley it was?

A. Wallie Hawley, I think, the young one.

Q. And did Mr. Fainblatt introduce him also?

A. Yes, he introduced him.

Q. How did he introduce him?

A. As a friend of his and a friend of ours also.

Q. Did he speak?

A. Yes.

Q. What did Mr. Hawley have to say?

A. He was telling us of an experience that he had when he was building ships and he belonged to a union and he was making a large sum of money and then he said that they caught one fellow smoking and they all had to go out on strike to get that fellow back and they did go back and they had to put so much money up that they couldn't do it, so they were all out of a job, and he told us to take his advice and stay out of the union; and he told us his girl was getting eight dollars a week using her brains, and she was getting half as much as we were.

Q. Anything further?

A. No. He said we should stick to our boss and go to him with our troubles.

Q. Anything further?

A. No.

Q. Any reference to whether or not Mr. Hawley had an interest in the place?

A. He rented the plant to Mr. Fainblatt and I suppose he had it insured.

Q. Did he say that?

A. No, but I happen to know that.

Q. You made a reference a while ago to Mr. Adams. Do you mean Mr. Robert Adams?

A. The sheriff, Sheriff Adams.

Q. The sheriff of this county?

A. Yes.

Q. Did he also address you girls?

A. On August 28th, he did.

Q. Where at?

A. Downstairs, near the office.

Q. Of the plant?

A. Yes.

Q. What time of the day was it?

A. That is when we were to go get our pays. Mr. Fainblatt wouldn't let anybody get their pays until they were all down stairs together.

Q. And what else?

A. He closed the doors and wouldn't let us leave until Mr. Adams spoke.

Q. Did Mr. Fainblatt introduce Mr. Adams?

A. Yes.

Q. How?

A. Sheriff of Somerville. He said he just got through looking at the payroll and we had no kick coming to us, and that we should all stick to our boss and go to him with our troubles, and he would fix it up for us.

Q. That is the week you got—

A. Yes, three dollars and twenty-eight cents for thirty eight hours.

Q. Did he make any reference at that time to the Union?

A. He said we should not join the union.

Q. I show you Board's exhibit number five, marked for identification, Miss Katz, is this your application blank?

A. Yes.

Q. Will you tell me whether or not that is your signature?

A. Yes, it is.

Q. You signed your own name to it?

A. Yes.

Q. Is the rest of the card in your handwriting?

- A. No, that is Mr. Posner's.
Q. Did you give him the information?
A. Yes, I did.
Q. He wrote it down?
A. Yes.
Q. You signed it?
A. Yes.
Q. You signed it on the date stated here, August 21st, 1935?
A. Yes.
Q. That is all.

Cross Examination

BY MR. GIROFSKY:

- Q. Where do you live, Miss Katz?
A. 23 Vanderveer Avenue.
Q. How long have you lived there?

MR. MOSCOVITZ:

I offer the card, is it introduced or is there to be an objection to it?

MR. GIROFSKY:

I should like to examine her on the card first.

BY MR. GIROFSKY:

- Q. Did you sign this card?
A. Yes, I did.
Q. And when did you sign it?
A. August 21st.
Q. What year?
A. 1935.
Q. Where were you when you signed it?
A. Up at the hall in Raritan.
Q. What hall?
A. I don't remember the name of it.
Q. What street?
A. I don't know.

Q. You don't know. Who was at the halt in Raritan?

A. The girls; Mr. Posner.

Q. How many girls?

A. There were around twenty-five girls.

Q. Did you count them?

A. Well, I looked at them.

Q. Did you count them?

A. Not exactly.

Q. Yes, or no?

A. Well, I did look over them.

TRIAL EXAMINER GATES:

Answer the question.

A. No.

BY MR. GIROFSKY:

Q. Why didn't you?

A. Well—

Q. Why didn't you? Answer me.

A. No, I didn't.

Q. Why didn't you answer me in the first place?

Now, we can get along very well if you will answer my questions and refrain from fencing.

MR. MOSCOVITZ:

Mr. Examiner, the witness is obviously not fencing with Mr. Girofsky.

MR. GIROFSKY:

That is obviously the contrary.

BY MR. GIROFSKY:

Q. You didn't count the girls?

A. No.

Q. You don't know how many were there?

A. I know about how many were there.

Q. Who were the girls there?

A. Some girls from the plant.

Q. Name them?

A. Well, I remember Ethel Ree was there, Mary Morano, Anna Santora, Vangie Matteis.

Q. Is that all you can name?

A. That is all, all that I remember now.

Q. That was the meeting on the 21st?

A. Yes.

Q. Did you write this entire card?

A. No.

Q. Who wrote the other phases of it?

A. Mr. Posner.

Q. I have no objections.

MR. MOSCOVITZ:

I offer it.

TRIAL EXAMINER GATES:

Received.

(Document referred to received in evidence, marked Board's exhibit number five, Witness Katz).

BY MR. GIROFSKY:

Q. You were arrested by the Somerville police, weren't you?

MR. MOSCOVITZ:

I object to that question. How is that material to this issue?

MR. GIROFSKY:

I believe this is material to the issue, Your Honor. I want to show this girl's activities and her attitude.

TRIAL EXAMINER GATES:

I don't know whether it is material but I think it may go in at the moment, at least.

MR. MOSCOVITZ:

I may also state in the record—well, I will reserve the statement until I see what Mr. Girofsky is going to say.

BY MR. GIROFSKY:

Q. You were arrested by the Somerville police during the picketing activities on the plant's premises; were you not?

A. I was not arrested.

Q. You were taken to police headquarters, were you not?

A. Yes.

Q. You were discharged with a warning, were you not?

A. Yes.

Q. You were. And that was for disorderly conduct, was it not?

A. No.

MR. MOSCOVITZ:

Mr. Examiner, now just a moment, may I make a statement?

TRIAL EXAMINER GATES:

Certainly.

MR. MOSCOVITZ:

It is certainly obvious in a community such as Somerville, where the mayor of the community, the sheriff of the county, the gentleman who rented the property to Mr. Fainblatt, conspire with him to rid his plant of a Union organization, the gentleman who is associated with the prosecution comes in and identifies himself with the respondent here, that the entire testimony in this direction and in this regard should be stricken from the record.

MR. GIROFSKY:

And in answer to Mr. Moscovitz, I am sorry that he takes that attitude towards his home town, which he has left for bigger fields. I might say that the prosecutor's office was not repre-

sented at any police court hearing, that this is entirely a municipal affair, and not a county affair, that this girl was arrested, she was released, that she has been up to the police court, and if Your Honor please, I feel I ought to have an opportunity to answer these remarks which are entirely out of order and improper and unfair to the county officials.

MR. MOSCOVITZ:

We will let the record speak for itself.

TRIAL EXAMINER GATES:

The line of questioning may continue, but the last question was entirely improper.

MR. GIROFSKY:

Before going on with this witness, I wish to refer to the rules of this Board promulgated by this Board, and I want to know where I stand with respect to rules of evidence, whether the rules as promulgated by the Board itself are correct or whether Mr. Moscovitz is correct in his interpretation of the rules, or the rules in use. Is it a fact that strict rules of evidence do not pertain to this hearing?

MR. MOSCOVITZ:

Have you read the Statute? I am not in the habit of educating counsel for the other side. If Mr. Girofsky is so familiar with the rules of evidence, he would not have asked the question in the manner in which he did to this witness.

MR. GIROFSKY:

I want you to admit it.

Will Your Honor grant me a ruling on that? Do the rules of evidence apply in this proceeding?

MR. MOSCOVITZ:

What rules?

TRIAL EXAMINER GATES:

What is your contention?

MR. GIROFSKY:

I just want to find out whether or not counsel is going to confine me to a technical ruling here on matters of this arrest.

MR. MOSCOVITZ:

Mr. Girofsky is blowing hot and cold. Mr. Girofsky has interposed so many objections during this entire proceeding that it has made me dizzy. Now, he comes in—if Mr. Girofsky is not familiar with the Statute in this case, Mr. Examiner, I will be very pleased to tell him that the statute provides that legal rules of evidence shall not be controlling in these proceedings.

MR. GIROFSKY:

Exactly. Evidently, I was right.

MR. MOSCOVITZ:

You were not sure.

BY MR. GIROFSKY:

Q. You were taken to police headquarters by a policeman, were you not?

A. Yes.

Q. And you were taken into the custody of the police on the premises of the manufacturing plant—is that right?

A. What was that?

Q. Where were you taken in custody by the police?

A. Repeat it.

Q. I repeated it.

(Question read)

A. In Fainblatt's place.

Q. In the alleyway?

A. Yes.

Q. You were raising a disturbance at the time, were you not?

A. No.

MR. MOSCOVITZ:

I object, Mr. Examiner. It seems to me the witness should not be placed in a position of possibly incriminating herself in this proceeding.

MR. GIROFSKY:

That objection must be raised by the witness, if we are adhering to strict rules of evidence, Mr. Moscovitz. She has been advised—too much.

MR. MOSCOVITZ:

Furthermore, I cannot see for the moment where this is leading us to and how this is material to the issue as to whether or not this girl was discharged for Union activities.

TRIAL EXAMINER GATES:

Objection sustained.

MR. GIROFSKY:

It is just as important to show the credibility of this witness. She has denied that she was arrested. There are records to indicate that she was taken in custody and sentenced. If I can affect her credibility in that respect, I am going to do it. She has no appreciation for the oath of this court.

MR. MOSCOVITZ:

I again must object on the record to Mr. Girofsky's improper references to the testimony of this witness. It is a means of badgering and intimidating this witness, which is disgraceful in any proceeding, and I must very strenuously

state my objection in the record for that purpose.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Is Mr. Moscovitz' objection overruled?

TRIAL EXAMINER GATES:

Answer the last question. I previously ruled the objection was sustained. I think the record is clear on that.

BY MR. GIROFSKY:

Q. You were permitted to go away with a warning, were you not?

A. Yes.

Q. What was that warning?

A. Not to stop any of the girls, to speak to her, or anything.

Q. And not to impede any girl or hamper her from going to and from work?

A. I did not.

Q. Weren't you warned to refrain from that?

A. From talking to any girl.

Q. Yes or no?

A. From speaking to any girl.

Q. And it was your talking and speaking to any of the girls down there that lead to your going to police headquarters; isn't that so?

A. Yes.

Q. Now, when was the second meeting of the Union that you attended?

A. The 28th.

Q. Where?

A. Raritan.

Q. Where in Raritan?

A. At this hall.

Q. You still don't know the street?

A. No.

Q. Who was there?

A. The girls, Mr. Posner.

Q. How many girls?

A. There was between thirty-three and thirty-five.

Q. Did you count them?

A. I knew how many there was.

Q. Yes or no, did you count them?

A. No.

Q. Answer the questions please. And who were the girls there?

A. I don't remember.

Q. You can't name them?

A. No.

Q. That is your best answer?

A. Yes.

Q. Where was the next meeting held?

A. In Raritan.

Q. Going back a moment, the first meeting that was held in Raritan, is that the meeting that Mr. Posner was elected to represent the girls?

A. Yes.

Q. The second meeting that was held there, that was the meeting that was held in order to vote upon calling a strike, wasn't it?

A. No.

Q. Was everybody permitted to enter that hall that night?

A. What night is that?

Q. The second meeting.

A. Anybody that was interested, yes.

Q. Anybody permitted to enter the first meeting?

A. Yes.

Q. And when you say "anybody", "anybody who was interested" what do you mean by that?

A. Any of the girls in the plant that were interested in organizing were allowed in there.

Q. Any one else permitted to enter that outside of the girls in the plant interested in Union activities, and Mr. Posner, was anyone else permitted to enter?

A. I don't know what you mean by that.

Q. In other words this meeting was closed to everybody except those potential members, the girls that were working in the plant and Mr. Posner—no one else was permitted to enter?

A. Yes, there were.

Q. How do you know that?

A. I happen to know that, the mayor and Mr. Hawley were invited to one meeting.

Q. At Raritan?

A. Well, it was at Raritan.

Q. I am talking about the first meeting in Raritan.

A. Anybody could go there, anyone was allowed.

Q. Could anybody enter that meeting that night?

A. Yes.

Q. Who called that meeting?

A. The girls.

Q. What girls? Name them.

A. Ethel Rice told me about it, that they are going to call a meeting that night.

Q. Who else?

A. Mary Morano and Anna Santora.

Q. Were they the only three girls?

A. They came to me.

Q. Did you notify any girls of the meeting?

A. You mean the first day? I asked a couple.

Q. Who?

A. I don't remember who they were.

Q. You don't know?

A. I don't remember now.

Q. You just asked a couple? Were the girls you asked actually working at the time?

A. Yes.

Q. Are they working now?

A. I don't know.

Q. You don't know?

A. Some of them are on strike.

Q. The two girls, the couple you asked, are they working?

A. No, they are out on strike.

Q. What did you mean before when you said you don't know?

A. I asked more than a couple.

Q. Now you asked more than a couple. How many did you ask?

A. I can't tell the exact amount.

MR. MOSCOVITZ:

What difference does it make if she asked fifty or five or none. I object to the question on the ground of its being immaterial and absolutely irrelevant to the issue, and it seems to me that Mr. Girofsky is engaged in a beautiful fishing expedition which gets you no place.

MR. GIROFSKY:

I am catching a lot of suckers.

MR. MOSCOVITZ:

That remains to be seen. I wouldn't like to characterize what you are catching, Mr. Girofsky.

TRIAL EXAMINER GATES:

Objection sustained.

BY MR. GIROFSKY:

Q. How many girls attended the second meeting?

A. Thirty or thirty-five.

Q. You told me before you didn't count them, did you?

A. I imagine there was that amount.

Q. Is it just your imagination?

A. Yes.

Q. You didn't count them, did you?

A. No.

Q. Who were the girls?

A. I can't remember all of them.

Q. Name them?

A. Ethel Rice, Mary Morano, Angie Matties and Anna Santora, Elizabeth Shoaka.

Q. Is that all?

A. Yes.

Q. The third meeting, where was that held?

A. The same place.

Q. Who was there?

A. The girls, Mr. Posner.

Q. Name the girls.

A. I just named the ones that were at the second meeting. They were there too.

Q. Who else?

A. A lot of them.

Q. Name them.

A. I can't.

Q. Why can't you?

A. I can't.

Q. You don't know?

A. I do know.

Q. You have been out with them picketing in

these small quarters, cooped up here, and you can't name them?

MR. MOSCOVITZ:

I object.

TRIAL EXAMINER GATES:

Objection overruled.

BY MR. GIROFSKY:

Q. You can't name them?

A. No.

Q. You can't name them—

MR. MOSCOVITZ:

She can't name them, for the fourth time.

BY MR. GIROFSKY:

Q. Was that the meeting where the strike was called?

A. No.

Q. When was the next meeting? We have had three, when was the next meeting?

A. The next meeting—I don't remember if that was the last meeting or the meeting before.

Q. You had three meetings. When was the next one held?

A. I don't remember if we had four or five.

Q. I am asking for the fourth meeting, when was it held?

A. The night of the strike.

Q. What night was that?

A. That was on Tuesday night, September 17th, the night before the strike.

Q. Where was it held?

A. Recreation Center.

Q. Who was there?

A. The girls and Mr. Posner.

Q. Who were the girls?

A. Well, the girls that vow—that signed up for the Union.

Q. Who were the girls, name them.

A. There was quite a few of them.

Q. Name them?

MR. MOSCOVITZ:

Mr. Examiner, I must object again to this. I don't like to interpose these objections, but it is absolutely immaterial. The records will speak for themselves, as to whether or not the girls belong to the Union. The physical manifestation of joining the Union exists by the girls going out on strike. Where are we going to draw the line on this line of questioning.

MR. GIROFSKY:

You opened the door to it.

TRIAL EXAMINER GATES:

We have had a wide latitude here for both counsel. I expect that a certain amount of discretion will be used in pursuing it. I don't like all these objections. Please proceed.

BY MR. GIROFSKY:

Q. Who were the girls there?

A. Well, there was Ethel Rice, Angie Matteis, Margaret Hoffman, Mary Spatt.

Q. Name any others.

A. Anna Santora, Mary Morana.

Q. Is that all?

A. That is all I can remember now.

Q. How many were there?

A. I didn't count them.

Q. You didn't count them. You don't know, do you?

A. There was around forty there..

Q. Yes or no. Do you know how many were there?

A. No.

Q. Now that was the meeting at which the strike was called, isn't that so?

A. Yes.

Q. Was Posner there?

A. Yes.

Q. Ross there?

A. I don't remember if he was there or not.

Q. You don't know?

A. I don't remember.

Q. You don't know, do you?

A. I don't remember if he was there.

Q. When was the next meeting held?

A. I don't know what you mean by the next meeting. Was there another meeting?

Q. What kind of a meeting?

A. Of the Union—what kind of a meeting do you think I am referring to.

MR. MOSCOVITZ:

Before or after the strike? The witness should be given some idea of what Mr. Girofsky is leading to.

A. You said the next meeting.

BY MR. GIROFSKY:

Q. Don't argue with me. Answer the question.

TRIAL EXAMINER GATES:

If the question is not clear, the reporter can read it back to you.

A. I don't know which meeting he means. After or before—

BY MR. GIROFSKY:

Q. You had a meeting the night before the strike, when was the next meeting?

A. Well, after we walked out on strike, we all met.

Q. When?

A. After we all walked out on strike.

Q. When?

A. September 18th.

Q. Why didn't you answer the question in the first place?

TRIAL EXAMINER GATES:

You are confusing the witness and shouting at her, and I prefer that you conduct your examination in a more normal way.

BY MR. GIROFSKY:

Q. Who was present at that meeting?

A. The girls that walked out on strike, and the ones that were discharged and Mr. Posner.

Q. Any girls at that meeting who were— withdraw the question. Now, the last week you worked, ended when, on what day?

A. Well, ended on a Monday afternoon, noon time.

Q. During the last week you worked, how many hours did you work?

A. I don't know how many hours I worked. I didn't work steady.

Q. You didn't work a full week, that is eight hours a day, did you?

A. No.

Q. The last week. And how many dozen garments did you produce the last day that you were working?

A. I don't remember.

Q. How many garments did you produce in the last week that you were working?

A. I don't know.

Q. How much did you receive the last week as compensation?

A. The day we went out on strike, that was my last pay, and I got two dollars and ninety five cents.

Q. What did that two dollars and ninety-five cents represent?

A. The week before and Monday.

Q. You mean, the number of garments for which you were paid—how many a dozen.

A. Sixty-three cents a dozen.

Q. Sixty-three cents. About four dozen garments in one week, you produced; isn't that so?

A. I produced more than that.

Q. Yes or no, how many garments did you produce in the last week?

A. I don't remember.

Q. You were paid the proper amount, weren't you?

A. I don't know.

MR. MOSCOVITZ:

Witness has not stated she was not paid the proper amount.

BY MR. GIROFSKY:

Q. Did you ever go back to Mr. Fainblatt for more money after you received your pay?

A. He wouldn't have done it if we had.

Q. You didn't ask him was any more money due you?

A. I don't know.

Q. Was there—yes or no?

A. I don't know.

Q. Is that your best answer?

A. Yes.

Q. If there had been more money due you, you would have gone back for it, wouldn't you?

A. I don't think I would have.

MR. MOSCOVITZ:

How does that matter?

MR. GIROFSKY:

You have lead the public to believe that she received two dollars for a week's work.

MR. MOSCOVITZ:

I don't try this case for the public as you do, Mr. Girofsky. I try these cases for justice. We have made no allegation that this particular witness is entitled to any more money than she says she has gotten. I'll leave it for you to decide whether she received outrageously high amounts for her work.

MR. GIROFSKY:

Counsel has, on his direct examination gone into the matter of wages per week. The charge is that these girls complained of being under paid, overworked, bad conditions of work.

TRIAL EXAMINER GATES:

I don't know anything about that.

MR. MOSCOVITZ:

That is not the charge in the complaint.

MR. GIROFSKY:

It is not the charge in the complaint?

MR. MOSCOVITZ:

The charge in the complaint is that this company failed or refused to bargain collectively with representatives of these girls.

MR. GIROFSKY:

And that they had selected a representative because of poor working conditions and low wages.

MR. MOSCOVITZ:

That follows.

TRIAL EXAMINER GATES:

I don't see that any of the testimony on direct or cross is pertinent. I am willing to allow Mr. Girofsky a reasonable amount of latitude, but I hope that neither counsel will abuse the latitude that is given to them.

MR. GIROFSKY:

I will attempt to confine my examination, if Your Honor, please, to the matters brought out by Mr. Moscovitz on direct. I am making every endeavor to do that.

TRIAL EXAMINER GATES:

Please continue. If there is an objection on the rec'd, it is overruled.

MR. MOSCOVITZ:

But I think I am entitled to make one statement for the record because I fear that Mr. Girofsky is continuing under a misapprehension of our purpose. Now, it is clear that the only reason I direct any questions to the witness regarding hours and pay, and it is a relevant inquiry, is because it might become necessary for the Board upon its consideration of the record, if it finds that the witness was improperly discharged, to determine amounts of back pay that witnesses are entitled to, so I submit that it is certainly relevant.

MR. GIROFSKY:

For that purpose, Your Honor, I wish to show that the conditions under which she worked, Your Honor, has already permitted me to proceed, I won't endeavor to answer him.

BY MR. GIROFSKY:

Q. How many garments did you produce in the last week?

A. I don't remember.

Q. You don't know, do you?

A. I don't remember.

Q. Now, at the time you were working there, you received the same price per dozen garments as the other girls received, didn't you?

A. I thought so.

Q. And you never complained to Mr. Fainblatt prior to September 16th about the amount of wages, did you?

A. It wouldn't do any good.

Q. Did you, yes or no? Please, we will get along very well—

A. No, I didn't.

Q. You didn't, did you?

A. No, I didn't.

Q. And you never complained to Mr. Ruby about the wages, did you?

A. No, I didn't.

Q. And you worked there for how long, prior to September 16th?

A. Around nine months.

Q. You were steadily employed?

A. Yes.

Q. Yes, that is, Mr. Fainblatt endeavored to keep you occupied at something as much as he could in order to give you some return each week, isn't that so?

A. Repeat that question.

(Question read to the witness).

MR. MOSCOVITZ:

How can this witness testify what Mr. Fainblatt's endeavor was?

TRIAL EXAMINER GATES:

She may answer.

A. He had nothing to do with that.

Q. Did Mr. Ruby give you some work during the slow seasons? I withdraw the question. You worked steadily, didn't you?

A. Four or five months.

Q. Were you laid off at any time?

A. For an afternoon.

Q. Because of slow seasons?

A. Well, it was a little slow.

Q. There was no work for you at the time, was there?

A. Yes, there was.

Q. Now, during the nine months that you were in the employ of the Somerville and Somerset Companies, what was the greatest number of dozens of garments you produced, and what type of garments were they, in one week's time?

A. I couldn't tell you that because we were not on one style all day long.

Q. You received a certain amount, the same amount as the other girls received, didn't you? Isn't that right?

A. Yes.

Q. For a number of dozens, or each dozen of garments, and you were paid by Mr. Fainblatt each week for every dozen of garments that you turned out weren't you?

A. Yes.

Q. And he doesn't owe you any money today, does he, on the basis of the payment that you agreed to work there for; is that right?

A. That's right.

Q. If you had turned out fifteen dollars worth of work one week, you would have received fifteen dollars, is that right?

A. No, and during the N. R. A., no, we got thirteen dollars.

Q. You never got above thirteen dollars in the N. R. A.?

A. No.

Q. If you turned out more than thirteen dollars worth of work a week?

A. I never got thirteen dollars during the N. R. A.

Q. What were you doing during the N. R. A.? You were never paid thirteen dollars?

A. No.

Q. What kind of work were you doing?

A. Operated the same as when I was discharged.

Q. How many dozen garments did you produce the last week of the N. R. A. code?

A. I can't remember that far back.

Q. Did you ever produce enough garments to bring about a total payment of thirteen dollars?

A. Yes.

Q. You got it, didn't you?

A. I never got thirteen dollars.

Q. You received payment for every bit of work you performed? Answer yes or no.

A. I never got thirteen dollars.

Q. Does Mr. Fainblatt owe you any money today for work you did?

A. How do I know.

TRIAL EXAMINER GATES:

I think you had better ask her if she has any explanation for it. After all, you are building up a record. This is not a jury trial. I am after the facts in the matter, not debate.

BY MR. GIROFSKY:

Q. Did you pay any dues to the union?

A. No, I did not.

Q. Have you ever paid any dues?

A. No.

Q. Are you receiving any pay?

A. Yes.

Q. Are you working at the present time?

A. What do you mean "working at the present time"?

Q. Are you working at the present time?

A. No.

Q. How much are you getting?

A. Five dollars.

Q. What are you doing for the five dollars?

A. Picketing at times.

Q. Have you tried to get another job?

A. I didn't try but I was placed.

Q. Were you placed?

A. Yes.

Q. How long did you work at the other job?

MR. MOSCOVITZ:

That testimony has all been gone into.

MR. GIROFSKY:

By Mr. Moscovitz only.

BY MR. GIROFSKY:

Q. How long did you work at the other job?

A. Four and a half days.

Q. Where was it?

A. Plainfield.

Q. Is that the best Mr. Posner or the Union could do for you from September 18th to the present date?

A. We started this fight and we will fight it out.

MR. MOSCOVITZ:

If a person is going out on strike, they are entitled to go out on strike and exercise their economic strength to better working conditions,

and he can pass no aspersions because a Union makes relief payments to members.

MR. GIROFSKY:

If I recall correctly, Mr. Moscovitz opened the door to this line of questioning when he concerned himself with the witness working in Plainfield.

TRIAL EXAMINER GATES:

Continue the line of questioning, but you don't need to put in a double-barrel question that way.

BY MR. GIROFSKY:

Q. Have you worked anywhere else since your job of four days in Plainfield?

A. No.

Q. Who placed you in that job?

A. Mr. Posner.

Q. Has he sent you to any other place?

A. No.

Q. What did you do in those four and a half days?

A. I worked on skirts.

Q. Where?

A. In Plainfield.

Q. What shop?

A. Watchung Avenue, 400 Watchung Avenue.

Q. What is the name of the plant?

A. I don't know.

Q. Don't you know?

A. It is a skirt place.

Q. Who was your boss?

MR. MOSCOVITZ:

I object to the question. I don't see that it is relevant by whom she was employed so long as she worked during that period.

MR. GIROFSKY:

It is quite relevant. A person ought to know who they worked for for four days. They ought to know the name of the plant.

TRIAL EXAMINER GATES:

It is revelant. Objection overruled.

BY MR. GIROFSKY:

Q. Who was your superior?

A. We called him Mr. Alphonso.

Q. What is his name?

A. That is what we called him.

Q. Who was your employer?

A. Mr. Alphonso.

Q. Where does he live?

A. I don't know. He is an Italian man.

Q. Did you receive pay from Mr. Fainblatt by check?

A. No.

Q. You were in error when you told Mr. Moscovitz that you received a check the last day you worked?

A. I didn't tell Mr. Moscovitz I received a check.

MR. MOSCOVITZ:

I don't recall any such testimony.

MR. GIROFSKY:

You asked her when she received her check.

BY MR. GIROFSKY:

Q. You were paid in cash, weren't you?

A. Yes.

Q. Always?

A. Yes.

Q. How many girls worked at the plant in Plainfield?

A. I didn't stand up and count them.

Q. You didn't count them?. Approximately how many?

A. I don't know.

MR. MOSCOVITZ:

I object to this line of questioning. I think he ought to stop it. It is beyond any proper scope of examination.

TRIAL EXAMINER GATES:

Objection sustained.

Examination

BY TRIAL EXAMINER GATES:

Q. You were speaking of this employment of four and a half days at Plainfield, Miss Katz, you didn't state very clearly as to the amount of money you received for that?

A. I got fifteen dollars and some change.

Q. You don't know how much?

A. I don't remember how much.

Q. It was not sixteen dollars?

A. No. That was a new line of work. I had never worked on it before.

Q. As to your testimony about the two different meetings held in the plant that Mr. Fainblatt introduced the speakers, did he remain in the room during the meetings?

A. Yes, he did.

Q. As far as you noticed at least?

A. I was there and he was there.

Redirect Examination

BY MR. MOSCOVITZ:

Q. Miss Katz, in answer to Mr. Girofsky's ques-

tion, you stated that during the N. R. A. you were supposed to get thirteen dollars a week?

A. Yes.

Q. Well, is that—

MR. GIROFSKY:

I object to this. The code itself is the best evidence. I don't see where it has any materiality and it is not proper redirect.

MR. MOSCOVITZ:

Why did you go into this, then?

TRIAL EXAMINER GATES:

I don't think it is necessary to go into it any further.

BY MR. MOSCOVITZ:

Q. Just one further question. Mr. Girofsky stated that you were arrested. Also, the record will show that you were warned by certain officials as to how you should conduct yourself?

A. By one.

Q. Were you ever shown a warrant for your arrest?

A. No, sir.

MR. GIROFSKY:

I object to this. This has already been gone into.

MR. MOSCOVITZ:

I am certainly entitled to clear this up. It may prove prejudicial.

TRIAL EXAMINER GATES:

The record is clear on that point.

BY MR. MOSCOVITZ:

Q. Were you taken to an official?

A. I was taken to headquarters in front of assistant prosecutor.

Q. Before whom?

A. Right there. (Indicating.)

Q. Mr. Wharton, the gentleman who is acting as one of the counsel in this case?

A. Yes.

Q. Was he the gentleman that spoke with you?

A. Yes.

Q. Then you left?

A. Yes.

Q. That is all.

(Witness excused.)

TRIAL EXAMINER GATES:

We will have a three minute recess.

AFTER RECESS

ANNA SANTORA, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

BY MR. MOSCOVITZ:

Q. What is your full name?

A. Mrs. Anna Santora.

Q. Where do you live?

A. 19 Colfax Street, Somerville.

Q. Are you a member of the Union?

A. Yes, I am.

Q. When did you join?

A. I joined when I went to Mr. Posner's office August the 14th or 15th, I believe.

Q. 1935?

A. Yes.

Q. Are you still a member of the Union?

A. I am.

Q. Did you work for the Somerset Manufacturing Company?

A. I did.

Q. When did you go to work for the company?

A. About the time they opened up.

Q. 1934?

A. Yes.

Q. You worked steadily for them until what time?

A. Until the day of the strike, when I was discharged.

Q. September 18, 1935?

A. Yes.

Q. What kind of work were you doing for the company?

A. Operating.

Q. And at the time that you say you were discharged, were you working piece work or at regular salary?

A. Yes. I was working at piece work.

Q. Piece work?

A. Yes.

Q. What basis, what rate?

A. Piece rate.

Q. How much were you getting?

A. How much was I getting?

Q. A dozen?

A. See, I worked on everything and there was all different prices on the work that I did.

Q. What were you working at at the time?

A. At the time I was discharged?

Q. Yes.

A. On lumber jackets and ski pants.

Q. What would you get a dozen for lumber jackets?

A. There was all prices on lumber jackets, you see, different styles brought different prices, and I don't remember exactly.

Q. How many hours were you working a week?

A. Forty hours when I didn't work overtime. When I worked overtime, I worked more.

Q. What was your income on the basis of the forty hour week before the strike?

A. Well, I was getting from twenty to thirty-one, although I didn't get it. Once, when I was supposed to get thirty-one dollars a week, I didn't get it.

Q. Between twenty and thirty-one dollars a week then?

A. Yes.

Q. Before the strike?

A. Before the strike.

Q. Or was it during the N. R. A.?

A. It was during the N. R. A.

Q. Did you make the same after the N. R. A.?

A. No.

Q. How much did you make after the N. R. A.

A. Eight or nine dollars.

Q. A week?

A. Yes.

Q. Same hourly basis?

A. Yes.

Q. That is what you were making at the time of your discharge?

A. Yes.

Q. I see. You stated you were discharged on what date?

A. September 18th, just before the strike. See, they thought I was going to blow the whistle for the

girls to get up, and Mrs. Evans, she told me there wouldn't be any more work for me because the girl next to her told her that I told her that I was going to blow the whistle, so she got up and told the forelady, and I heard her because I was in back of her.

Q. Who was the forelady?

A. Mrs. Evans.

Q. Who was the girl?

A. Fannie.

Q. Yes?

A. She told the forelady that Ann is going to blow the whistle.

Q. What did she mean by that?

A. For the girls to go out on strike.

Q. Did you hear her tell this to the forelady?

A. I was in back of her, but she didn't know it and Mrs. Evans told Ruby and she came back and said, "No more work for you."

Q. Where was Ruby?

A. He was across the room, and she told him.

Q. Do you know what she said to Ruby?

A. No.

Q. You know that after she spoke to this girl, she went over to Ruby?

A. Yes, she was talking to me before that, she told me, she said, "Annie, I heard you was the one that started all this trouble here," and she said, "You went to Mr. Posner," and she said, "You"—She said, "You was the one that went to Mr. Posner and told them."

MR. MOSCOVITZ:

Q. Could we have a recess for a moment? Why don't you go and have a drink of water?

(Witness is excused.)

TRIAL EXAMINER GATES:

You may be excused from the stand for a moment.

(Witness returns and resumes the stand.)

BY MR. MOSCOVITZ:

Q. Now, was this conversation with Mrs. Evans?

A. Yes, that was.

Q. And did she say anything further to you?

A. Yes, she told me that—

MR. GIROFSKY:

I object to conversations, Your Honor please, that is hearsay.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Exception.

A. And she told me "You are the one that is going to blow the whistle", and I answered her, "I have not got any whistle".

Q. Was it after that that she went to speak with Mr. Ruby?

A. It was after that, when the girl next to me kept asking me a lot of questions. She always asked me a lot of questions and I always told her—

MR. GIROFSKY:

I object to all conversations between this witness and any one other than the respondents. There is no testimony that respondents were present at the time.

MR. MOSCOVITZ:

I will withdraw the question.

BY MR. MOSCOVITZ:

Q. You say that you have had certain conversations with this girl that worked next to you?

A. Yes, I always did.

Q. And did Mrs. Evans then speak to you again?

A. When do you mean?

Q. At the time you say Mrs. Evans went to speak to Mr. Ruby; is that right?

A. Yes.

Q. Was that after you finished speaking with Mrs. Evans?

A. Yes.

Q. And after she finished talking to you?

A. Yes.

Q. Now, before she went to speak to Mr. Ruby, did she say anything further to you?

A. She told me "No more work for you." It was fifteen minutes before the girls walked out on strike.

MR. GIROFSKY:

I object to that, to all these conversations when the respondent was not shown to be present.

TRIAL EXAMINER GATES:

Objection overruled.

BY MR. MOSCOVITZ:

Q. Any further conversations?

A. No, that is all.

Q. Was it then that she went to speak to Mr. Ruby?

A. That was when she come back. She told me "No more work for you."

Q. She had gone to Mr. Ruby and then she came back and then she said, "No more work"?

A. No more work for me.

Q. Did she speak to Mr. Ruby within your vision of sight?

A. Yes.

Q. You saw her speak to Mr. Ruby?

A. Yes.

Q. She just went over to him?

A. Yes, and they both looked at me and she come back and said, "No more work for you."

Q. Then what did you do?

A. Just went and took my things and left.

Q. It was fifteen minutes after that you say that the strike was called?

A. Yes.

MR. MOSCOVITZ:

Mark this for identification.

(Document referred to marked for identification, Board's exhibit No. six, Witness Santora.)

BY MR. MOSCOVITZ:

Q. I show you Board's exhibit No. six for identification; is this your application for the Union?

A. Yes, that is my signature.

Q. Whose handwriting is the balance of the card?

A. Mr. Posner's

Q. Was it August 15th—the date you signed this signature?

A. Yes.

Q. And September 18th was the date you were discharged?

A. Yes.

MR. MOSCOVITZ:

I introduce that.

MR. GIROFSKY:

I just wish to examine this witness before this.

Cross Examination

BY MR. GIROFSKY:

Q. Where were you at the time you signed this card?

A. Mr. Posner's office.

Q. Where?

A. In Plainfield.

Q. Who was with you?

A. Ethel Rice and Mary Morano.

Q. Who invited you down there?

A. Nobody invited us. We went down there, with the girls consenting to us to go there.

Q. Who told you about going to Mr. Posner's office?

A. Us girls were talking before.

Q. Who do you mean by "us"?

A. The girls in the factory.

Q. Name them.

A. How many of them?

Q. Name them.

A. A good majority of them.

Q. Did you count them?

A. No.

Q. Do you know it was a majority?

A. I know it was a majority.

Q. You didn't count them?

A. No, but I know it.

Q. How many girls were working in the plant before the time—

A. Before the girls were discharged, there was about fifty-eight or sixty.

Q. Did you ever count them?

A. No, but I could just about tell.

Q. And was there a meeting on August 14th?

A. A meeting? There was no meeting.

Q. The day you signed this card?

A. No, there was no meeting.

Q. How much money did you receive—

MR. GIROFSKY:

I have no objection to this card.

TRIAL EXAMINER GATES:

Admitted.

(Document referred to received in evidence marked Board's exhibit number six, witness Santora.)

BY MR. GIROFSKY:

Q. How much money did you receive during the week of August 14, 1935?

A. About six dollars.

Q. Are you sure?

A. Yes.

Q. How many garments did you produce in a week?

A. I don't remember.

Q. How do you remember the price and fail to recall the number of garments that you produced?

A. What price?

Q. The money you received.

A. I know I got six dollars.

Q. You did exactly six dollars' worth of work that week, didn't you?

A. No, I did more, according to when before I got cut, I got way more than that.

Q. Wait a minute—forget about cuts. The week of August 14th, you did so many dozens of garments; isn't that right?

A. Yes.

Q. And how much a dozen were you receiving for a garment?

A. I don't know how much I was receiving at that time.

Q. But the amount of six dollars was the full

pay for the number of garments you turned out, wasn't it?

A. Yes.

Q. At the rate you were working at, at that time?

A. I suppose.

Q. So that it was not a case of receiving six dollars as a salary for one week, as much as it was receiving six dollars for actual work being turned out by you, and Mr. Fainblatt paying you that much?

A. I never was a slow worker. I should have gotten away double that amount.

TRIAL EXAMINER GATES:

Answer the question please.

BY MR. GIROFSKY:

Q. Perhaps we will put it this way: Mr. Fainblatt paid you actually that which was due to you that week; didn't he for the number of garments you produced? Isn't that right?

A. I don't understand what you mean.

Q. Now, you don't recall the number of garments you produced, do you?

A. No, I don't remember.

Q. You were paid a certain amount for a dozen garments isn't that right?

A. Yes.

Q. Now, you produced enough dozen garments to equal a total pay of six dollars? Isn't that right?

A. I don't know—I never knew what price I was getting until the end of the week.

Q. You knew under what prices you were working there, didn't you?

A. No, I didn't. He never told us until the end of the week when we got our week's pay. That is how we knew what we got.

Q. Prior to that week, how much did you receive?

A. I don't remember.

Q. How much did you receive the last week that you worked?

A. Before I went out on strike, do you mean?

Q. Yes.

A. I don't know, I think it was about six or seven.

Q. You were one of those who went out on strike, weren't you?

A. I was fired.

Q. Did Mr. Fainblatt say to you in those words that you were fired?

A. No, he didn't tell me, he didn't discharge any of the workers.

Q. He didn't discharge anyone?

A. He had the foreman or the forelady do that.

Q. Mr. Fainblatt didn't do that, did he?

A. No.

Q. You didn't see the foreman and the forelady talking to Mr. Fainblatt?

A. No.

Q. That day?

A. No, I didn't.

Q. And how much did you receive now the last week you worked?

A. I think it was six or seven dollars. I don't remember exactly.

Q. How many days in the last week did you work?

A. I just don't remember exactly how many.

Q. You don't remember?

A. No.

Q. How many hours did you work in the last week?

A. I don't remember how many hours.

Q. How many dozens of garments did you produce in the last week?

A. I don't remember.

Q. You don't remember. Now, you stated to Mr. Moscovitz that you earned thirty-one dollars a week?

A. Once I was supposed to get it, but I didn't.

Q. Did you ever get thirty-one dollars for a week's work there?

A. No, because he didn't give it to me. I was supposed to get it.

Q. What was the most you ever received in one week during the entire time you worked there?

A. I was supposed to get thirty-one dollars.

Q. How much was the most you received in the entire time you worked in the plant?

A. I think it was twenty-eight dollars.

Q. You received twenty-eight dollars? You say that under the N. R. A. you received thirty-one dollars a week?

MR. MOSCOVITZ:

She didn't testify that way, Mr. Examiner.

BY MR. GIROFSKY:

Q. How much was the most you received under the N. R. A.?

A. I just wanted to say on them books there, that Mr. Fainblatt has two sets of books.

Q. Do you know that?

A. Yes.

Q. Did you ever see them?

A. Yes.

Q. Where?

A. Because once I was short on my pay and I got eight dollars and nineteen cents and I went and

looked at it and the girl in the office, she had fourteen dollars and ninety-five cents in the books, and I told her I didn't receive that, and she said, "Pardon me"—

Q. Now, don't cry.

A. She said, "That is for the N. R. A. man to see. Here is what you got, and this is what you will get."

Q. Was Mr. Fainblatt ever prosecuted by the N. R. A.? Did you ever complain to the N. R. A. officials?

A. Please don't talk so loud. I am not deaf.

Q. Yes or no. Did you ever complain to the N. R. A. officials?

A. I don't hear you—you are talking too loud. I didn't have a chance to.

Q. You never did, did you?

A. No.

Q. Who told you there were two sets of books?

A. Nobody, I seen them.

Q. Where?

A. In the office.

Q. When?

A. When I was short in my pay.

Q. What day?

A. I don't remember what the day was.

Q. What month?

A. I don't remember what the month was, but it was during the N. R. A.

Q. How long did the N. R. A. last? Who showed you the books?

A. The girl in the office.

Q. What is her name?

A. Jean.

Q. Where is she?

A. I don't know where she is.

Q. What is her last name?

A. I think it is Sanders.

Q. Where does she live?

A. Somerville.

Q. Where were the books in the office when you saw them?

A. Well, she had one book in her hand when I asked her, and she showed me fourteen dollars and ninety-five cents and I told her I didn't receive that amount, and she said, "Pardon me," and she put it back. She said, "That is for the N. R. A. man." She said, "I will tell you in a minute what you got," and she picked up a smaller book, and she showed me eight dollars and ninety-five cents, and she said, "That is what you got."

Q. Why didn't you complain to the N. R. A. man too?

A. I didn't have a chance to.

Q. Any one prevent you from doing it?

A. No.

Q. You continued working there then for how many months after that?

A. Until the day of the strike when he fired me.

Q. How long after?

A. I just don't remember exactly.

Q. One month?

A. I don't remember exactly.

Q. Two months?

A. I couldn't say.

Q. Three months?

A. I told you I couldn't say.

MR. MOSCOVITZ:

The witness says she doesn't remember.

MR. GIROFSKY:

She seems to have a vivid recollection of other things.

MR. MOSCOVITZ:

It is quite easy to understand why she would have that, but the answer is she doesn't remember.

BY MR. GIROFSKY:

Q. You were already a member of the Union on September 18th, 1935, weren't you?

A. Yes, I was.

Q. And you were one of those who had agreed to go out of employment on the 18th of September, 1935, weren't you?

A. Agreed to do what?

Q. Agreed to leave the plant on September 18th, 1935?

A. I was going to go with the rest of the strikers, yes.

Q. You intended to leave of your own volition, didn't you?

A. Yes.

Q. And have you received any pay while you were out on strike?

A. I have.

Q. How much?

A. Five dollars.

Q. What for?

A. For nothing.

Q. For nothing. And are you satisfied with the pay that you are receiving at the present time?

A. Well, sure.

Q. Are you married?

A. Yes. I have two children and a husband.

Q. Is your mother working; your father?

A. No, I have no father.

Q. Is your husband working?

A. He is now, but he wasn't.

Q. Ever on relief?

A. My mother was, but I had to move with my mother on account of the conditions of that factory and that is why I went to Mr. Posner.

Q. And you never applied for further employment, did you?

A. No.

Q. Mr. Posner has not placed you in employment as he has Miss Katz?

A. No, he didn't do that with me.

Q. You are an operator, aren't you?

A. Yes.

Q. Is Miss Katz an operator?

A. Yes.

Q. Do you consider yourself a better operator than Miss Katz?

A. I don't know how fast she was, but I know I was about the highest paid one in there, so I must have been.

Q. Have you asked Mr. Posner for employment?

A. No, I have not.

MR. MOSCOVITZ:

Mr. Examiner, I don't see where this has anything to do with the issue. Mr. Posner is not an employment agency.

MR. GIROFSKY:

He seems to be.

MR. MOSCOVITZ:

He is a Union representative.

BY MR. GIROFSKY:

Q. When was the first meeting after August 14th?

A. There was no meeting on August 14th.

Q. When was the first meeting of the Union that you attended?

A. August 21st.

Q. Where?

A. In Raritan.

Q. And did you sign on the 21st?

A. No, I signed in Mr. Posner's office on August 14th.

Q. You were one of those that called the meeting?

A. I didn't call—all us girls called.

Q. You were one of those that called the meeting?

A. Yes.

Q. And the meeting was only open to those employees of the plant here?

A. No.

Q. And Mr. Posner?

A. No, the door was open. Anybody could have went in.

Q. Anyone eligible to join outside the employees of the plant?

A. I don't know. I didn't inquire.

Q. And did anyone else appear there besides Mr. Posner representing any other organization?

A. Not that I know of.

Q. Did you have an opportunity at that meeting to elect any one else to represent you besides Mr. Posner?

A. No, we didn't want anybody else. We wanted Mr. Posner.

Q. Now, how many were at that meeting?

A. I don't know exactly how many were there.

Q. You didn't count them, did you?

A. No.

Q. And who was at the meeting?

A. The girls and Mr. Posner.

Q. Name them.

A. I can't name every one of them, that was there.

Q. Name them, those that you do know.

A. Mary Morano, Ethel Rice, Mary and Elizabeth, and Angelina, and quite a majority of others. I can't name them all.

Q. You can't name any more, can you?

A. No.

Q. When was the next meeting?

A. September 28th.

Q. September what?

A. I mean August 28th.

Q. Where was that meeting?

A. The same place.

Q. And by the way, the first meeting that you elected Mr. Posner to represent you—

A. Yes, we did.

Q. The first meeting?

A. Yes, we did.

Q. That was on the 21st?

A. Yes.

Q. Did you hear Miss Katz and the others testify that there was no representative elected at the meeting on the 21st?

A. Did I hear what?

Q. Miss Katz stated that Mr. Posner was not elected as a representative at the meeting of the 21st?

A. I didn't hear nothing of the kind.

Q. Are you sure he was elected on the 21st?

A. Yes.

Q. And at the meeting held on the 28th, how many were present?

A. I don't know exactly the amount.

Q. Did you count them?

A. No.

Q. Who was present?

A. The same girls I told you and a lot others.

Q. Who were the others?

A. I can't name them right off the block—I don't know all these girls.

Q. Was that the meeting where the strike was agreed upon?

A. No.

Q. When was the next meeting?

A. I think it was September 5th.

Q. Where?

A. Same place.

Q. Raritan?

A. Yes.

Q. Who was present?

A. All the girls that I mentioned with a lot of others.

Q. Who were the others?

A. I can't say right off hand.

Q. You can't name them, can you?

A. No.

Q. No?

A. No.

Q. And did you count the number there?

A. No, I didn't.

Q. You don't know how many were there?

A. No, not exactly.

Q. And it was at that meeting that the strike was called?

A. No.

Q. Was there another meeting?

A. Yes.

Q. Where was that held?

A. I think it was at the Recreation Hall.

Q. When?

A. About the 17th, I think, I am not quite sure.

Q. The day before the strike?

A. Yes.

Q. And you were present?

A. Yes.

Q. And you agreed to go on strike?

A. Yes.

Q. And who was there?

A. All the girls.

Q. How many?

A. I don't know exactly the amount.

Q. Did you count them?

A. No, I didn't.

Q. Name the girls?

A. I can't name each and every one of the girls.

Q. Name the girls there?

A. I can't name every one of the girls there.

Q. That is the meeting when the strike was called; is that right?

A. Next to the last meeting, yes.

Q. Was there another meeting after that?

A. After the strike?

Q. After the strike. Did you pay any dues to the Union?

A. No.

Q. Never paid?

A. No.

Q. That is all.

Redirect Examination

BY MR. MOSCOVITZ:

Q. You didn't have much chance to pay dues, did you?

A. No.

MR. GIROFSKY:

I object to that.

BY MR. MOSCOVITZ:

Q. Mrs. Santora, these girls that you saw at the various meetings, will you tell me whether or not they were girls you had seen at work for the Somerset Manufacturing Company?

A. Oh, yes, they were girls I had seen there. We weren't allowed to talk in the factory, we had signs all over "No talking," so we didn't know the girls personally.

MR. GIROFSKY:

It is not responsive. I ask that that be stricken.

TRIAL EXAMINER GATES:

It may be stricken.

BY MR. MOSCOVITZ:

Q. But are you sure, I mean, that the girls that you saw at these meetings were girls you had seen at work?

A. Yes, every one of them.

Q. No others?

A. No others.

(Witness excused.)

MRS. ELIZABETH SHOAKA, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:—

Direct Examination

BY MR. MOSCOVITZ:

Q. Where do you live?

A. 27 Thompson Street, Raritan, New Jersey.

Q. Did you work for the Somerset Manufacturing Company?

A. I did.

Q. When did you go to work for them?

A. I started the latter part of August and then he laid me off—

Q. 1934?

A. Yes.

Q. And then—

A. He laid me off before Christmas.

Q. 1934?

A. 1934.

Q. Yes.

A. Then he called for me after Christmas, I don't remember just when, 1935, he called me back.

MR. GIROFSKY:

Who is she referring to?

BY MR. MOSCOVITZ:

Q. Whom do you mean when you say "he"?

A. Ruby.

Q. The foreman?

A. Yes.

Q. When you say he laid you off; whom do you mean?

A. I don't know who told Ruby, but he said "I will send for you."

Q. He is the one that laid you off and called for you?

A. Yes.

Q. Then when you came back, did you work continuously?

A. I did.

Q. When?

A. Until August 15th, 1935.

Q. What kind of work were you doing for the company?

A. An operator.

Q. The same sort of work that Mrs. Santora was doing?

A. I was doing the same work, and on skirts I was on another machine. I wasn't doing the same kind of stuff.

Q. On the same floor?

A. Yes.

Q. How much did you make—how much were you making? Were you working piece work or hours?

A. Piece work.

Q. You were considered one of the very fast operators or slow ones?

A. Well, kind of fast, not so fast and not so slow, medium.

Q. And you worked for the company during the N. R. A., didn't you?

A. Yes.

Q. Did you work piece work then, too?

A. I did.

Q. Do you remember how many hours you used to work a week?

A. Forty to fifty hours, sometimes even more than fifty.

Q. You would work overtime?

A. I did.

Q. Do you remember what your piece work rate was during that period?

A. See, when I was on that machine during the N. R. A., why, he put me on time work, and I was making thirteen dollars, and then I worked overtime. I never got paid no more than thirteen—even if I worked overtime or not, because he considered I was just a learner on that machine.

Q. So, no matter how many hours you worked, you got—

A. I got thirteen dollars a week.

Q. Even though you were supposed to be receiving piece work?

A. See, he said I would be on time work until I get fast on the machine.

Q. Were you fast or slow on the machine?

A. I wouldn't consider slow, medium.

Q. How many pieces were you turning out a day?

A. At first I was a learner, forty and fifty a day, but now when I got used to it, I pulled out between fifty and sixty, sometimes even over that.

Q. During that period were you still making thirteen dollars a week?

A. No, I was on time work. He put me on piece work then and he didn't even tell me he was putting me on piece work and that following week I only got eight dollars and change.

Q. During the N. R. A. you were making thirteen dollars a week?

A. Yes, but at the same time during the N. R. A. he gave me the eight dollars when I didn't know I was on piece work.

Q. So instead of getting thirteen dollars you got eight dollars?

A. Yes.

Q. After the N. R. A. did you receive the same income, thirteen dollars?

A. No.

Q. What happened after the N. R. A.?

A. I was on piece work after the N. R. A., as much as I made I got.

Q. Did you work any regular number of hours a week?

A. Then, after the N. R. A., I worked around forty.

Q. You say you averaged forty hours a week?

A. Yes.

Q. Up to the time of the last day with the companies?

A. Yes.

Q. Do you know what your income was during those weeks?

A. I don't remember exactly; but I remember I got a lot of times between nine and twelve dollars, the most.

MR. GIROFSKY:

I wish counsel would have time fixed.

BY MR. MOSCOVITZ:

Q. Would you say that was your average income between nine and twelve dollars?

A. Yes.

Q. Did you ever receive less than nine dollars a week?

A. Maybe I did, I don't remember.

Q. Did you ever receive more than twelve dollars a week?

A. No.

Q. Did you join the Union?

A. I did.

Q. When did you join?

A. I joined August 14th, the same day as the girls went to Plainfield.

Q. Are you still a member of the Union?

A. I am.

Q. Are you employed at the present time?

A. I was working, then I joined because I needed the money. My husband got ill after I got married and I needed the money, so Mr. Posner gave me a job in Plainfield, and I worked for the Stars Dress Shop.

Q. Before you get to that—you joined the Union August 14th, 1935?

A. I did.

Q. How long did you work for the company after that day?

A. What day?

Q. August 14th?

A. For what company?

Q. Somerset Manufacturing Company?

A. I was laid off. He discharged me. He said I was causing too much trouble. On the day between August 15th, was the next day after I signed.

Q. You mean you were let out the day after you signed for the Union?

A. He discharged me. He said, "You are causing too much trouble."

Q. Who is he?

A. Mr. Ruby, the foreman.

Q. Tell me what happened.

A. I waited for work at five minutes to eleven.

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Mrs. Evans, the forelady, she came to me and I asked for work, and she said, "Mr. Ruby will attend to you," and when I came by—when he came by me, he said, "You are causing too much trouble. Get your work marked and go home," so I got my word marked and went home.

Q. Had you, before your discharge, had you ever any conversation with Mr. Fainblatt regarding the Union?

A. Not Mr. Fainblatt.

Q. With whom?

A. With Mr. Ruby.

Q. When was that?

A. This was about a week before I was discharged, and Mr. Ruby told Mr. Fainblatt—Mr. Fainblatt told Mr. Ruby to take me downstairs. So Mr. Fainblatt asked me to come in to his office, so when I got into the office, he waited until the book-keeper went out, and he says to me, he says, "Don't be afraid, I won't hurt you."

Q. Who was that?

A. Mr. Fainblatt. He said, "who approached you to sign the Union—Frank or his wife?" and I said, "Nobody," because neither one of them had approached me.

Q. Was there any further conversation between you and him?

A. No more then. I went up to work.

Q. Did you ever have any further conversation with him at any other time?

A. No.

Q. It was the date you already referred to when Mr. Ruby spoke with you that you were discharged?

A. Yes.

Q. That is the last you had anything to do with either Mr. Fainblatt or Mr. Ruby? Is that right?

A. Yes.

Q. Now, after that date, or after the date of your discharge, did you go to work for anyone else?

A. Yes, I did.

Q. From—for whom?

A. Stars Dress Shop.

Q. When?

A. I think it was August 22nd that I went to work.

Q. Where are they located?

A. Plainfield on Richmond and South Streets.

Q. How long did you work there?

A. Around four or five weeks, because I needed the money.

Q. And after the expiration of the four or five weeks,—

A. Well, then there wasn't much work so he laid me off.

Q. How much were you getting there a week?

A. First seventeen—he says if I work there a couple of more weeks, he would give me from twenty to twenty-three as a good dressmaker.

Q. Was it the same work you were doing for the Somerset Manufacturing Company?

A. Yes, it was, hemming.

Q. After the expiration of that period, you came back to Somerville? Did you work then for anyone else?

A. No, I didn't, because I came for the strike.

Q. You are still a striking employee?

A. Yes.

Q. Are you receiving relief payments from the Union?

A. I am.

Q. How much do you get?

A. Five dollars.

Q. Do you get it every week?

A. I do.

Q. Do you get it from the International Union?

A. Yes, I do.

Q. What is that money for? Is it for you to live on?

A. It is.

Q. And during this period, you still continued in your striking activities?

A. I do.

MR. MOSCOVITZ:

Please mark this for identification.

(Document referred to marked for identification, Board's exhibit number seven, Witness Shoaka.)

BY MR. MOSCOVITZ:

Q. I show you Board's exhibit number seven, marked for identification, and I ask you what it is.

A. That is my application card for the Union.

Q. Is that your signature?

A. Yes.

Q. Is the rest of the card in your handwriting?

A. Yes, I did.

Q. You filled it all out?

A. I did.

MR. MOSCOVITZ:

I offer it in evidence.

(Document referred to received in evidence marked Board's exhibit number seven, Witness Shoaka.)

Cross Examination

BY MR. GIROFSKY:

Q. You say you joined the Union August 14, the date of this card?

A. I did.

Q. Where did you sign it?

A. Over at my house.

Q. Who brought it to you?

A. I met one of my girl friends, Mary Morano, when she came back from Plainfield, and I invited her to my house and she had one of those cards and I asked her could I see it, so I joined it right there and then.

Q. She told you she had the cards?

A. Yes, she had some cards.

Q. You didn't know she had cards until she spoke to you about them?

A. No.

Q. Just a moment—who else was with her?

A. Anna Santora.

Q. Who else?

A. Ethel.

Q. What is her last name?

A. Rice.

Q. Anyone else?

A. That is all—I met them coming from Plainfield.

Q. She invited you to join the Union?

A. No, I invited myself.

Q. You invited yourself, and you say you were laid off the day following the signing of this card?

A. I imagine so.

Q. Why, don't you know when you were laid off?

A. I believe I was laid off around August 15th.

TRIAL EXAMINER GATES:

Admitted.

Q. August 15th, you say?

A. After I signed that card.

Q. You are not certain?

A. I am not certain.

Q. You told Mr. Moscovitz in certain terms that you were laid off the day following the joining of the Union?

A. The day after I joined I was laid off.

Q. You joined the Union the date you signed the card? Have you paid any dues?

A. No, I never paid any dues.

Q. Did you attend a meeting the night of the 14th?

A. There was no meeting the 14th.

Q. You are charging the respondents with having been discharged by them on August 21st, that is not right, is it?

A. No, it was not the 21st.

Q. It was sometime before the 21st, was it not?

A. Yes.

Q. And had you been laid off before August 14th—you had, hadn't you? Before Christmas of that year you were laid off; weren't you?

A. Yes, because he didn't have no work for me.

Q. You came back later and received work?

A. He sent for me.

Q. You went back?

A. Yes.

Q. Were you ever laid off before, ever laid off after that, between that time and the time you went out on strike?

A. No.

Q. Now, you had your slow seasons and your busy seasons at the plant, didn't you?

A. Yes.

Q. And it was at that time, just before Christmas, that they had a slow season; isn't that right?

A. Yes.

Q. Now, prior to your first lay-off at Christmas, how long had you been working?

A. I started to work there the latter part of August, when they opened up.

Q. 1934?

A. 1934.

Q. Is that right?

A. Yes.

Q. You had had steady employment?

A. For a while.

Q. Then your work slowed up, didn't it?

A. Yes.

Q. To the point where you had little or no work to do, isn't that right?

A. Yes.

Q. And it was nothing unusual for the work to slow up, was it?

A. No.

Q. And then you went up to the point where your work had slowed to such an extent that you were laid off at Christmas time, isn't that right?

A. Yes.

Q. It was nothing unusual for you to be laid off at that time, was it? You didn't consider it as such?

A. No.

Q. Then you went back to work; is that right? Now when was the first meeting you attended?

A. August 21st.

Q. The year?

A. 1935.

Q. Where?

A. Harmony Hall, Colfax Street.

Q. Where?

A. At Raritan.

Q. And how many were there?

A. I don't know just exactly how many.

Q. Did you count them?

A. No, I didn't.

Q. Who was there?

A. There was my sister, Mary Gecik, Margie Hovak, Mary Morano, Anna Santora, Ethel Rice and I think Fay Katz was, and Sophie Ziegler, and there were some of those there that are still working in the shop. Do you want their names too?

Q. Yes.

A. I don't know her last—

MR. MOSCOVITZ:

I object to the introduction of those who may still be working in the shop.

MR. GIROFSKY:

And I can assure you, Mr. Examiner, that these names of these persons will not—

MR. MOSCOVITZ:

I don't think it is necessary to inquire further into the matter.

TRIAL EXAMINER GATES:

I ruled on that point yesterday and I rule the same today that the names may not be given.

MR. GIROFSKY:

Take an exception.

BY MR. GIROFSKY:

Q. Some of the girls, however, who were there didn't carry on with their Union activities; is that right?

A. Which ones?

Q. Some of the girls who are still working today?

A. There was just one or two.

Q. They went back to work?

A. Yes, they did.

Q. They are still working there today, aren't they?

A. Yes.

Q. That is all you can name, is that right?

A. Yes.

Q. At that meeting, was that the meeting at which Mr. Posner was elected to represent you?

A. He was.

Q. By the girls you named?

A. By the girls.

Q. You named?

A. I named? Of course, there were more than I named.

Q. When was the next meeting?

A. August 28th.

Q. Where was that held?

A. Harmony Hall, Colfax Street, Raritan, New Jersey.

Q. Who called that meeting?

A. The girls.

Q. What girls?

A. The Union girls.

Q. Name them?

A. Sophie Zeigler, Mary Gecik, Mary Morano,

Anna Santora, Frances Cicero, Fay Katz, Ethel Rice, Carmella Recchia. There is some girls I don't know their last names.

Q. That is all you can name?

A. I don't know their last names.

Q. Did you count the girls?

A. No, I didn't.

Q. You don't know how many were there?

A. No.

Q. Was that the meeting at which the strike was called?

A. No.

Q. At that meeting you were not working for the Somerset Manufacturing Company?

A. No.

Q. You were not?

A. No.

Q. At the meeting before that you were not working?

A. No.

Q. You were out of the employ of the company before the strike occurred on September 18th?

A. Yes.

Q. Is that the answer?

A. He discharged me.

Q. I didn't ask you that.

MR. GIROFSKY:

I ask that that remark be stricken from the record.

(Question and answer read.)

TRIAL EXAMINER GATES:

The record is clear. Leave it in.

BY MR. GIROFSKY:

Q. Did you ever seek any employment elsewhere?

A. After I stopped working in Plainfield, or where?

Q. How long did you work in Plainfield?

A. Four or five weeks.

Q. Why did you stop working at Plainfield?

A. Because the dress shops got slow and he laid me off.

Q. Did you ever go back there for employment?

A. No, because they were slow.

Q. Did they ever call you back?

A. They haven't started working yet good.

Q. Are you satisfied to work under those conditions?

A. What conditions?

Q. Working for a few weeks and then being laid off for an indefinite period of time, and wait until they call you back?

A. I am.

Q. You are. You are still waiting for them to call you back in Plainfield?

A. I am waiting for the strike.

Q. Yes or no, are you waiting for them to call you back at Plainfield?

MR. MOSCOVITZ:

She answered the question. She is waiting for the strike.

A. I am waiting for the strike to end.

BY MR. GIROFSKY:

Q. And is it going to end?

A. I don't know.

Q. How long will that be?

A. I don't know.

Q. Have you attempted to go back for employment at the Somerset Manufacturing Company?

A. I don't know.

BY MR. MOSCOVITZ:

Q. Did you hear the last question?
(Question read to the witness.)

A. Yes.

BY MR. GIROFSKY:

Q. When did you attempt to go back?

A. I haven't attempted yet.

Q. Then you didn't go back yet?

A. No.

Q. Then why don't you answer? How long did Mr. Posner tell you this strike was going to last?

A. We don't know.

Q. Did he tell you it was going to last longer?

A. He don't know.

Q. Did you ask him how long it was going to last?

A. No, because we don't know.

Q. You are interested in going back to work, aren't you?

A. Well, yes.

Q. Why didn't you ask him when he was going to put you to work?

MR. MOSCOVITZ:

I object to the question, Mr. Examiner. Mr. Posner can't make any guarantees of employment.

TRIAL EXAMINER GATES:

Objection sustained.

MR. GIROFSKY:

Exception.

BY MR. GIROFSKY:

Q. Now, you testified you attended two meetings. When was the next meeting held?

A. I don't know because I was working. I didn't attend it.

Q. Where?

A. In Plainfield.

Q. What time of the day are the meetings held?

A. It was held after work, but I wasn't home then.

Q. You never attended any other meetings of the strikers before the strike was called here?

A. Sure, I have been at the first and second meeting.

Q. What was the last day, when was the last day you worked in Plainfield?

A. I don't remember.

Q. Was it the day before the strike in Somerville or after the strike?

A. Will you repeat that please?

Q. The last day you worked in Plainfield, was that before the strike was called in Somerville?

A. After.

Q. After the strike was called. Now, the strike was called September 18th; you were out of the employ of the Somerset Company on August 14th, is that right?

A. Yes, August 15th.

Q. Now, how long were you out of work before you started to go to work in Plainfield?

A. About a week, a week and a half.

Q. A week or a week and a half, and you worked how many weeks?

A. Four or five weeks.

Q. That would bring us down to your working at Plainfield at the time of the strike?

A. Yes.

Q. Then you were mistaken when you said you left your work in Plainfield before the strike, weren't you?

A. I don't—

MR. MOSCOVITZ:

She didn't say that, Mr. Girofsky.

BY MR. GIROFSKY:

Q. You were still working in Plainfield at the time of the strike in Somerville, the time it was called, weren't you?

A. Yes, that's right.

Q. You had no affiliation or connection with the Somerset Manufacturing Company on September 18th, 1935?

MR. MOSCOVITZ:

She testified she was discharged.

MR. GIROFSKY:

Now, Mr. Moscovitz, this witness is testifying.

BY MR. GIROFSKY:

Q. You were no longer in the employ of the Somerset Manufacturing Company on September 18, 1935?

A. I was discharged.

Q. Yes or no.

A. No.

Q. You were working then for the Plainfield Company?

A. Yes.

Q. Right. Now, when you were working in Plainfield, you considered yourself an employee there, didn't you?

A. Yes.

Q. Did you consider yourself an employee of the

Somerset Manufacturing Company at the same time?

A. Yes.

Q. Then you considered yourself an employee of both companies?

A. Yes.

Q. Is that right?

A. Yes.

Q. Now, you never attended any other meetings, did you?

A. No.

Q. I think that is all.

Redirect Examination

BY MR. MOSCOVITZ:

Q. You say you were discharged?

A. I was.

Q. After you were discharged you went to work for a while in Plainfield?

A. Yes.

MR. GIROFSKY:

That has all been gone over, Mr. Moscovitz. I don't think that is necessary.

MR. MOSCOVITZ:

I wish to clear it up a little.

MR. GIROFSKY:

I don't think it is—that it needs any clearing. Witness has been specific.

TRIAL EXAMINER GATES:

If there are some specific questions you think need clearing up, you may do so.

BY MR. MOSCOVITZ:

Q. These one or two girls that were at the Union

meetings that you say are still working for the company—are they girls that joined your Union or didn't they join it?

A. I don't understand the question.

Q. You testified before, in answer to Mr. Girofsky's questions, that there were one or two girls who were at the meetings in Raritan who are still working for the company and who remained at work for the company and did not go out on strike?

A. Yes.

Q. That is right, isn't it?

A. Yes.

Q. Had either one of those girls joined the Union, do you know?

A. I don't know if they did or not.

MR. GIROFSKY:

I object to any question—I withdraw the objection.

TRIAL EXAMINER GATES:

You may answer.

BY MR. MOSCOVITZ:

Q. Do you know whether or not they were members of your Union?

A. I don't know.

Q. That is all.

(Witness excused.)

ANGELINA MATTEIS, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

BY MR. MOSCOVITZ:

Q. What is your name?

A. Angelina Matteis.

Q. Where do you live?

A. 13 Anderson Street, Raritan, New Jersey.

Q. Were you employed by the Somerset Manufacturing Company?

A. I was.

Q. When did you go to work for the company?

A. Well, I worked there for about a year, but I didn't—can't remember when I first got it.

Q. Worked there for a year?

A. Yes.

Q. When was the last day you worked there?

A. August 22, 1935.

Q. What kind of work did you do?

A. I am an operator.

Q. Same sort of work Miss Santora does?

A. Yes.

Q. Did you work piece work?

A. I did.

Q. And what were the hours that you were working the week prior to your discharge?

A. I worked eighteen hours.

Q. That week?

A. Yes.

Q. Do you recall what your income was for that week?

A. I don't remember.

Q. Do you remember what your piece work rate was during that week?

A. Well, I couldn't say because we had just started the winter work and didn't have much of a chance to get started on it.

Q. You don't know how much you were getting for a dozen?

A. Yes, we were getting ninety-eight, but we were cut down to eighty-three cents a dozen and fifty-four cents.

Q. And you were getting sixty-eight cents a dozen or fifty-four cents a dozen?

A. Sixty-three and fifty-four, from ninety-eight cents.

Q. And the ninety-eight cents is what you were getting during the N. R. A.?

A. Yes.

Q. Right after that you got these cuts—would the two rates that you specified depend on the kind of work that you were doing?

A. Yes.

Q. What kind of work would you do to get the higher rate?

A. There wasn't very much difference, but I don't remember because I have been working on different stuff since then.

Q. What were the average hours which you would work?

A. Forty hours.

Q. And this was from the expiration of the N. R. A. up until the date of your discharge?

A. Yes.

Q. And you say you averaged forty hours a week?

A. About.

Q. Can you tell me what your average income was weekly during that period?

A. From eight to twelve dollars.

Q. Eight to twelve dollars. Now, will you tell me when you joined the Union?

A. The day after the first meeting, August 22nd, 1935.

Q. Are you sure it was August 22nd or August 21st?

A. August 21st, it was, I was discharged August 22nd.

Q. After having joined the Union?

MR. GIROFSKY:

I ask that that remark in the answer that she was discharged on the 22nd be stricken, it is not responsive.

TRIAL EXAMINER GATES:

Strike it.

BY MR. MOSCOVITZ:

Q. You joined the Union, you say, August 21st?

A. Yes.

Q. Now, before joining the Union had you had any discussion with any one about the Union?

A. I did.

Q. With whom?

A. You mean talking with the girls or—

Q. You had spoken with the girls about it?

A. I did.

Q. Girls also employed at the Somerset Manufacturing Company?

A. Yes.

Q. How long a period before you joined the Union?

A. The day of the first meeting I was talking to girls outside and I imagine my discharge was due to the fact that it could have been overheard.

MR. GIROFSKY:

I ask that that be stricken.

TRIAL EXAMINER GATES:

Just a minute—

BY MR. MOSCOVITZ:

Q. You say the day after—

MR. GIROFSKY:

The answer was not responsive and I ask that any reference to discharge be stricken from the record as irresponsible.

TRIAL EXAMINER GATES:

Hasn't she already testified as to leaving the employment?

MR. MOSCOVITZ:

I will lead up to that. What I want from this witness is whether or not she discussed with co-workers the Union.

A. I did, outside the plant. Not during working hours.

BY MR. MOSCOVITZ:

Q. Before the date of the alleged discharge in this case, had you spoken with co-workers?

A. Yes.

Q. When was it?

A. The 21st, the day of the first meeting. I asked the girls if they were going to the meeting that night, and there were some girls there who are working in the plant now, and they could have gone back and told them.

Q. Now, did you have any discussion with any one of your supervisory employees?

A. No, I did not.

Q. Did Mr. Ruby speak to you about the Union?

A. No.

Q. Or Mrs. Evans?

A. No.

Q. Did you have any discussion with Mr. Fainblatt about the Union?

A. No.

Q. Now, when was the last day you say you worked for the company?

A. The last day was August 22nd.

Q. That was the day after you joined the Union?

A. Yes.

Q. What happened to you on that day?

A. Well, the day before I went home, about thirty, because I was not feeling well, so I went in the next morning and the work usually starts at eight o'clock, so I asked for work and I was told to wait.

Q. By whom?

A. By Mrs. Evans, and Ruby told me to wait too, and so I waited until eight-thirty and Mr. Ruby called me to the side where the work was and he told me, he said, "I am sorry you are causing too much trouble. I have no more work for you." I said, "Can you prove it?", and he said, "No," so I said, "It is all right with me," so I took my belongings, had my work marked and I went home.

Q. And that is all that happened that day?

A. Yes.

Q. Before this had you attended any meetings, conducted by Mr. Fainblatt?

A. In the factory, yes.

Q. At which the Union question was brought up?

A. Yes.

Q. Are those the meetings that have been referred to already in these proceedings as the meetings attended by the mayor?

A. Yes.

Q. Were you there?

A. Yes.

Q. Were you also at the meeting attended by the sheriff of the county?

A. No.

Q. Did you attend the meeting where Mr. Hawley spoke?

A. Yes.

Q. Have you heard the testimony given by other witnesses in this case?

A. Yes.

Q. Have you heard the testimony given by other witnesses in this case regarding the conversations and statements made by the mayor and the sheriff?

A. Yes.

Q. Have you anything additional to add to that testimony?

A. No.

Q. You corroborate what was said?

A. Yes.

MR. MOSCOVITZ:

Will you mark this for identification? Board's exhibit number eight, please.

(Document referred to marked for identification, Board's exhibit number eight, Witness Matteis.)

MR. MOSCOVITZ:

I show you Board's exhibit number eight marked for identification. Will you tell me what that is?

A. This is the card of application.

Q. Is it in your signature?

A. Yes.

Q. Is the balance of the card in your handwriting?

A. No.

Q. Whose handwriting?

A. I imagine it is Mr. Posner's. In fact, I am sure it is Mr. Posner's.

✓ Q. Was it filled out in your presence?

A. It was.

Q. By Mr. Posner?

A. Yes.

Q. Then you signed it?

A. I signed it.

Q. And the writing, is that writing in response to answers which you gave?

A. Yes, it is.

MR. MOSCOVITZ:

I offer it.

Cross Examination

BY MR. GIROFSKY:

Q. Why did you imagine it was in Mr. Posner's handwriting?

A. At first I didn't know.

Q. You weren't sure?

A. Not when I first glanced at it.

Q. Now you are sure?

A. I am positively sure.

Q. Where was this signed?

A. Where was it signed?

Q. By you?

A. At the headquarters.

Q. Where is the headquarters?

A. Depot Square, Somerville, New Jersey.

Q. You didn't have any headquarters on August 21st, 1935, did you?

A. No, it was the first meeting.

Q. Where was the first meeting?

A. Harmony Hall.

Q. When was the first meeting?

A. August 21st.

Q. You are not sure when you did sign it, are you?

A. It was signed on August 21st.

Q. Why are you sure?

A. Because that is the date.

Q. Why are you sure of the date?

A. I don't know what you mean.

Q. You know the date, tell me why you are certain of the date.

A. Because that is when I signed it.

Q. What day of the week was it?

A. Oh, I don't know the day of the week.

Q. You don't know the day of the week. You are not certain about Posner's writing on here either, are you?

A. I am.

Q. When you first answered Mr. Moscovitz, you said you imagined it was, didn't you?

A. Yes, I did.

Q. And are you just as certain about your testimony with respect to the other questions and matters under Mr. Moscovitz' examination?

TRIAL EXAMINER GATES:

Is there any objection to this exhibit?

MR. GIROFSKY:

No.

(Document referred to received in evidence, marked Board's exhibit number eight, witness Matteis).

BY MR. GIROFSKY:

Q. —as you are about your answer? That is, that this card was signed at headquarters on Depot Square on August—1935?

A. That was an error.

MR. MOSCOVITZ:

The witness corrected herself on her testimony.

BY MR. GIROFSKY:

Q. Are you in error with any of your other testimony?

A. No, I am not.

Q. Are you sure of that?

A. Yes, I am sure.

Q. How many attended the first meeting?

A. I couldn't say how many really were there.

Q. You didn't count them?

A. No, I didn't, but I could name some of them that were there.

Q. Who?

A. Mary Morano, Sophie Ziegler, Helen Lee, Fay Katz, Ethel Rice, Mary Morano, Margie Hovan, Mary Spatt, Mayme Hobbs, Gertie Fields, Josephine Hurley, Ethel Hicks.

Q. Can't name any more?

A. Ethel Rice and myself.

Q. Can't name any more?

A. No, I can't.

Q. What time of the day was the meeting held?

A. Between a quarter to six and six o'clock.

Q. That is the meeting when Mr. Posner was elected your representative?

A. Yes.

Q. Of you girls?

A. Yes.

Q. That you just named?

A. Yes.

Q. And you weren't working on August 21st, were you?

A. I was.

Q. At the time of the meeting?

A. No, not at the time of the meeting.

Q. Have you worked since?

A. Yes, I have.

Q. Where?

A. Plainfield.

Q. Where?

A. Watchung Avenue.

Q. What is the name of the place? Who is the employer?

A. Mr. Robonna.

Q. Where does he live?

A. I don't know.

Q. How many girls were employed there?

A. I didn't count them, I would not know.

Q. You don't know? How many machines in the place?

A. I wouldn't know.

Q. How long were you working there?

A. A week.

Q. What kind of garments did you make?

A. Skirts.

Q. How many dozen skirts did you produce in that week?

A. I don't know how many dozens I did.

Q. How many hours did you work that week?

A. About thirty-seven.

Q. Now, when did you go to work there?

A. About a month ago.

Q. A month ago. Can you fix the date?

A. No, I can't.

Q. Was it before the strike?

A. No, it was not before the strike.

Q. Do you consider yourself an employee of the —did you consider yourself an employee of this Plainfield shop?

A. Temporary employee.

Q. At the time, a temporary employee; at the same time did you consider yourself an employee of the Somerset Manufacturing Company?

A. I did.

Q. You were not working there at the time, were you?

A. No, I was not.

Q. Now, if that work at Plainfield had continued, you still would have considered yourself an employee, would you?

A. I was not going to stay there, no.

Q. You didn't like it there, did you?

A. I didn't say I didn't like it.

Q. You had to pay transportation back and forth?

A. Yes.

Q. Why didn't you continue working there?

A. Because it was only temporary. As he had a lot of work there, he needed some workers, so Mr. Posner sent us down there to help out.

Q. Has Mr. Posner sent you anywhere else?

A. No, he has not.

Q. Have you applied for work anywhere else?

A. No.

Q. How much are you receiving today?

A. Five dollars a week.

Q. What do you do for the five dollars?

A. Picket.

Q. Where?

A. We used to picket in front of the factory, but we picket in front of Heuy's now.

Q. What are your duties as a picket?

A. Walk up and down with signs on.

Q. What else?

A. Nothing else.

Q. Did you do anything else as a picket besides walk up and down?

A. No, that is all.

Q. At any time that you picketed?

MR. MOSCOVITZ:

I object to this line of examination. There has been no direct testimony on it and it has no relevancy.

TRIAL EXAMINER GATES:

Objection overruled.

BY MR. GIROFSKY:

Q. When was the first meeting you attended?

A. August 21st, 1935.

Q. And you have already told us the names of the girls at that meeting and a number you couldn't tell; is that right?

A. Yes.

Q. You didn't count. That is the meeting when Mr. Posner was elected a representative, you say?

A. Yes.

Q. When was the next meeting?

A. The week after.

Q. Where?

A. Harmony Hall.

Q. What date?

A. 28th of August.

Q. What time of the day?

A. Between a quarter of six and six o'clock.

Q. And who was there?

A. The girls that I mentioned and more.

Q. Do you know the names of the others?

A. Julia Melenski; Julia Wirtzman; Anna from Boundbrook, but this girl is working there now. She came to our meeting, but she is not with us now.

Q. She is at the plant?

A. Yes.

Q. She was one of the girls that was at your meeting? Anna?

A. Yes.

Q. What is her last name?

A. I don't know. She was one of the girls at that meeting, and she has gone back to work. She only came to one meeting.

Q. That was the meeting at which Mr. Posner was elected representative?

A. The meeting before he was.

TRIAL EXAMINER GATES:

Is that the meeting on August 21st?

MR. GIROFSKY:

No, we are down to the second meeting.

TRIAL EXAMINER GATES:

I was trying to figure out, you referred to a meeting where a girl was present—

A. At the second meeting she was there.

BY MR. GIROFSKY:

Q. Now, when was the next meeting?

A. About the 5th of September.

Q. Are you sure?

A. No, I am not.

Q. Do you know what day it was on?

A. No, I don't.

Q. Where was the meeting held?

A. At Harmony Hall.

Q. Who was there?

- A. The girls that I mentioned.
- Q. You don't know any others?
- A. No.
- Q. And how many were there?
- A. At the first meeting?
- Q. Did you count them?
- A. No, I didn't.
- Q. You don't know how many were there?
- A. No, I don't.
- Q. Have you paid any dues?
- A. No, I have not.
- Q. Was there another meeting?
- A. There was.
- Q. And when was that?
- A. These meetings were a week after each other,
I imagine it was about the 12th.
- Q. You are not sure?
- A. No.
- Q. Who called that meeting?
- A. We called the meeting.
- Q. Who is "we"?
- A. The girls.
- Q. Who were they?
- A. The ones I mentioned.
- Q. No others?
- A. There were others, but I can't remember who they were.
- Q. You didn't count the number of girls?
- A. No, I didn't.
- Q. At that meeting?
- A. No.
- Q. You don't know how many were there?
- A. No.
- Q. Had you ever been laid off before?

Q. If you call laid off being off for a half day, yes.

Q. Had you ever been laid off before?

A. For a half day, yes.

Q. Then it was nothing unusual for you to be laid off, was it?

A. No.

Q. The day you left you say you spoke with Mr. Ruby, you didn't speak with Mr. Fainblatt; is that right?

A. That's right.

Q. You said to Mr. Ruby in answer to his statement that there was no more work for you that that was all right with you, didn't you?

A. Yes.

Q. That is all.

Examination

BY TRIAL EXAMINER GATES:

Q. If you were laid off for a half day, or whatever it might have been, at one time, you were generally notified as to when to come back, weren't you?

A. Yes.

Q. How were you notified?

A. Well, Mr. Fainblatt would say "Come in tomorrow morning", or "Come in this afternoon".

Q. At the time you left?

A. Yes.

Q. When you worked in Plainfield did you testify as to how much money you received?

A. No, I did not.

Q. How much was it?

A. About fifteen dollars.

Q. About fifteen dollars—more or less?

A. Yes.

Q. Which?

A. It might have been a little less, fourteen dollars and some change.

Q. How much?

A. I don't remember how much exactly I got.

Q. Was it more than fourteen?

A. Yes.

Q. But less than fifteen?

A. Yes.

Q. You were an operator, weren't you?

A. Yes.

(Witness excused).

TRIAL EXAMINER GATES:

We will adjourn until nine o'clock tomorrow morning in the Freeholders' Rooms downstairs.

Any witnesses in attendance today with subpoenas will report again tomorrow; also any other witnesses who have been requested to appear today will appear tomorrow.

(Thereupon at 4:00 P. M. an adjournment was taken until February 19, 1936, at 9:00 o'clock A. M.)

Freeholders Room,
Somerset County Court House,
Somerville, New Jersey,
February 19, 1936.

The above entitled matter was resumed for hearing pursuant to adjournment taken February 18, 1936, at nine o'clock A. M.

MARY GECIK, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

BY MR. MOSCOVITZ:

Q. What is your address?

A. One, Canal Street, Raritan, New Jersey.

Q. Were you employed by the Somerset Manufacturing Company?

A. I was.

Q. When did you go to work?

A. I went there the beginning of March, 1935.

Q. March, 1935?

A. Yes.

Q. How long did you work for them?

A. Until August 29th when I was discharged.

Q. 1935?

A. Yes, 1935.

Q. What kind of work were you doing?

A. I was an operator. I worked on slacks and shorts and other things like that.

Q. Did you work piece work?

A. Yes.

Q. And what was your piece work rate, do you remember?

A. I don't remember. There were different prices on different things. And on slacks we were getting 40¢ a dozen and then changed to 35¢.

Q. Would you be able to tell better what your income was after a week?

A. You mean after I worked a week?

Q. Yes.

A. The amount?

Q. Yes.

A. Well, I was getting about \$11 or \$12 during NRA.

MR. GIROFSKY:

I wish counsel would fix time on his question and also the number of hours per week.

A. And after the NRA I was just getting \$7 and \$8 a week.

Q. During the NRA how many hours did you work a week?

A. Forty.

Q. And after the NRA how many hours did you work a week.

A. Forty.

Q. Did you always work forty hours?

A. No.

Q. When you say forty, you mean you averaged forty hours?

A. Sometimes I only worked 35 to 40 hours a week.

Q. You worked between thirty-five and forty hours?

A. Yes.

Q. Are you working today?

A. No.

Q. Have you worked for any one else since leaving the Somerset Manufacturing Company?

A. No.

Q. Or since the alleged discharge?

A. No.

Q. Are you a member of the Union in this case?

A. I am.

Q. When did you join?

A. I joined August 21, 1935.

Q. I will show you Board's Exhibit 3 for Identification. Can you tell me what that is?

A. This is a card I signed for the Union.

Q. Is that your own Signature, and your own handwriting?

A. It is.

Q. That is the date?

A. It is.

Q. After signing this application, August 21, 1935 you continued on working?

A. I did.

Q. Before signing this application did you inquire about the Union, or was this the first time you had anything at all to do with the Union?

A. The 21st was the first time I knew about the Union. Before then I was not interested in it.

Q. Did you sign for this at a meeting?

A. Yes, I did.

Q. Is this the first meeting that we have been referring to of the Union?

A. Yes.

Q. Did you go to any other union meetings before you were discharged?

A. No, we did not have any more.

Q. You did not have any more?

A. No.

Q. Had any one of your bosses discussed union with you before the date of your discharge?

A. No.

Q. Mr. Fainblatt never spoke to you about it?

A. No.

MR. GIROFSKY:

That has been answered.

MR. MOSCOVITZ:

I wanted her to get it.

BY MR. MOSCOVITZ:

Q. The answer is no?

A. No.

Q. You say you were discharged on what date?

A. The twenty-ninth.

Q. By whom?

A. Mr. Ruby.

Q. And will you tell me what happened to you on that day?

A. I went in and was waiting. After about an hour he come by me and says to me, "I have not any more work for you. You are causing too much trouble. If you want work go to the Union. The Union will give you work."

Q. Had you been causing any trouble?

A. No.

Q. Been in any scrapes of any kind?

A. Never.

Q. Had not been put on the carpet, as it were?

A. No.

Q. Then you left. Is that it?

A. Yes.

Q. Did you return after that to work?

A. No.

Q. Did he call you after that to come back to work?

A. No.

Q. From that time on the question of your return was in the hands of Mr. Posner?

A. Yes.

MR. MOSCOVITZ:

That is all. I offer this card.

(The Union card referred was received and marked Board's Exhibit 9 for identification).

BY MR. MOSCOVITZ:

Q. Have you been here during the proceedings to date? Have you been in the court during these last two days?

A. Yes.

Q. You have heard the testimony of the witnesses who have been on the stand?

A. Yes.

Q. Were you at a meeting or any meetings in the plant before your discharge attended by Mr. Fainblatt and any other persons?

A. Yes.

Q. What other persons?

A. Well, the Mayor Hess was there, and Mr. Hawley was there, and Mr. Fainblatt introduced those two to us.

Q. Were you also in the presence of Mr. Adams, the Sheriff?

A. No.

Q. Just Mr. Hawley and the Mayor?

A. Yes.

Q. Have you heard the testimony of the witnesses in this case regarding those two gentlemen and Mr. Fainblatt?

A. Yes.

Q. Have you anything to add to the stories which they gave?

A. No. The same thing.

Q. Do you support that story?

A. Yes.

(Board's Exhibit 9 marked for identification was admitted to evidence).

Cross Examination

BY MR. GIROFSKY:

Q. When was the first time Mr. Fainblatt brought anyone to your plant?

A. August 21, 1935.

Q. What time of the day?

A. It was about four-thirty.

Q. Where were you at the time?

A. I was by my machine.

Q. Where was the meeting held in the plant?

A. On the floor of the operators. That is the middle floor.

Q. Is that the floor you were on?

A. Yes.

Q. What did Mr. Adams say?

A. Mr. who?

Q. Who was the first person to speak to you?

A. The mayor.

Q. Mr. Hess?

A. Yes.

Q. What did he say?

A. He said stick to the boss, he is your friend; that is where your bread and butter comes from.

Q. Is that all?

A. No.

Q. And all the girls in the plant at the time were present?

A. Except the floor girls.

Q. Yes, those engaged in operating were all present?

A. Yes.

Q. And you continued to work after that day?

A. Yes.

Q. And the other girls continued to work after that day?

A. Yes.

Q. Up to that time, August 21st, had you worked steadily or had you experienced any lay-off?

A. I had a couple of hours off, maybe every other day or so.

Q. And it was not unusual to you to be laid off momentarily was it?

A. No.

Q. Work during the time that you were there dropped from time to time, is that right?

A. Yes.

Q. And picked up on other occasions?

A. Yes.

Q. And it was nothing unusual for a number of girls to leave the plant for a couple of days during those low ebbs?

A. No.

Q. After you joined the Union you still continued to work, didn't you?

A. Yes.

Q. There were no complaints against you after you joined the Union, were there?

A. No.

Q. When you were employed, that was when?

A. That was in March, 1935.

Q. Who employed you?

A. Mr. Ruby.

Q. Mr. Ruby employed you?

A. Yes.

Q. He did not ask you if you belonged to the Union back in March, 1935, did he?

A. No, he did not.

Q. Now, where were you at the time you signed this card marked for Exhibit 9?

A. I was in the Hall in Raritan, New Jersey. Colfax Street. Harmony Hall.

Q. Who was there?

A. The girls.

Q. Did you count them?

A. No.

Q. You don't know the number?

A. No.

Q. Can you name them all?

A. I could not name them all. I could name some.

Q. Who else besides the girls?

A. Mr. Posner.

Q. What was done at that meeting?

A. Well, we voted for Mr. Posner to represent us.

Q. And after you did that you went back to work the next day?

A. Yes, we did.

Q. Did you speak with any of your bosses after that day?

A. No.

Q. You had no complaints to make?

A. No.

Q. Up to August 21st you had no complaints to make about your work, did you Miss Gecik?

A. No.

Q. Now, when was the next meeting that you attended?

A. August 28th.

Q. And where was that held?

A. The same place.

Q. How many were there if you know?

A. About twenty-five to thirty-five.

Q. Did you count them?

A. No.

Q. You don't know?

A. Well—

Q. I asked you if you knew how many were there?

A. No.

Q. What was done at that meeting?

A. Well, we were telling him about our conditions and everything like that.

Q. Told who?

A. Mr. Posner.

Q. Up to that time you had not told your bosses anything about conditions, had you?

A. Because he would not listen to us.

Q. Just a moment. You did not?

A. He would not listen any way.

Q. Answer the question, please.

A. No, I did not.

Q. We will get along very well if you just answer the questions. And when was that meeting held?

A. The 28th of August.

Q. That was the last day you were working?

A. Yes.

Q. You did not go out on strike did you?

A. No.

Q. You were not an employee were you?

A. I was but not at that time.

Q. The time of the strike?

A. No.

Q. You were not one of those who went out on strike?

A. No.

Q. Now, have you worked since August 28th?

A. No.

Q. Have you sought employment?

A. No.

Q. You did not seek employment between the 21st and the 18th of September?

A. No.

Q. What were you doing between those dates?

A. Stayed home.

Q. Working about the house?

A. At home.

Q. At home?

A. At home, yes.

Q. You are a married woman?

A. No.

Q. Who do you live with?

A. My mother.

Q. You helped her?

A. Yes, I did.

Q. Are there other members in the family?

A. There certainly are.

Q. How many?

A. Seven of us.

Q. All grown up?

A. No.

Q. How many of them grown up working?

A. One.

Q. You were helping about the house?

A. Yes.

Q. Now, from September 18th on did you seek employment anywhere?

A. I did not.

Q. What are you doing today?

A. Nothing just now.

Q. Not interested in getting employment?

A. Yes, I am.

Q. Then why did not you go after it?

MR. MOSCOVITZ:

I object to the question. The answer to that question is clear. The person is alleged to have been discharged because of union activities.

TRIAL EXAMINER GATES:

I think she may answer the question.

* * * The stenographer read back the question, "Then why did you not go after it?" * * *

BY THE WITNESS:

A. Because I was aiming to go back there.

Q. You told us that you were discharged.

A. I was.

Q. Did you want to go back and work?

A. As soon as the Union got in there.

Q. You would not go back under any other circumstance?

A. No.

Q. Yet you worked there without a complaint from the beginning of your employment?

A. Yes, I did.

Q. About a year.

A. No, it was not quite a year.

Q. Have you asked Mr. Posner to get you work in any union shop?

A. No.

Q. Why haven't you?

A. Because you have to work hard and you can't make nothing if it is not a union shop.

Q. That was not the question. Did you ask Mr. Posner to get you a job in a union shop since August 21st?

A. No, I didn't.

Q. Why didn't you?

MR. MOSCOVITZ:

I say again that Mr. Posner is not an employment agency. He is a representative of these girls.

TRIAL EXAMINER GATES:

The witness may answer.

A. Because I did not.

Q. Is that the best answer?

A. Yes.

MR. GIROFSKY:

That is all.

Redirect Examination

BY MR. MOSCOVITZ:

Q. You stated in answer to Mr. Girofsky's question at various times during your employment you had a couple of hours off daily?

A. Yes.

Q. Had you ever been completely laid off before?

A. No.

Q. This was the first time?

A. Yes.

Q. Had you ever had your boss speak to you in the same way that he spoke to you that day?

A. No.

Q. You also testified that Ruby did not ask you if you belonged to the Union in March, 1935. That is right?

A. No.

Q. There was no Union?

A. No.

MR. GIROFSKY:

Mr. Moscovitz has gone all over this.

MR. MOSCOVITZ:

These questions are raised.

TRIAL EXAMINER GATES:

You may proceed.

BY MR. MOSCOVITZ:

Q. Mr. Girofsky asked you if you know how many people were at the Union meeting on August 21st, 1935. You don't know how many were there?

A. I said between twenty-five to thirty-five.

Q. That is an approximation?

A. Yes.

Q. These people you are approximating about the people you had seen in and about the plant working?

A. Yes.

Q. You have also testified that you never spoke personally to Mr. Posner about your condition?

A. Yes.

Q. Did you want the Union to represent you for that purpose?

A. Yes.

Q. When you say you were not an employee the day of the strike meaning that you had been discharged just previously?

A. Yes.

Recross Examination

BY MR. GIROFSKY:

Q. About a month previous to the strike you were out of the employ?

A. No, not quite.

Q. Have you ever paid any dues to the Union?

A. No, never.

Q. How much did you receive under the NRA?

A. Twelve or thirteen dollars. Between that.

Q. Any less?

A. Once in awhile.

Q. You were paid on a piece work basis were you not?

A. Yes, I was.

Q. During the NRA and after the NRA?

A. Yes.

Q. And you received compensation for whatever you produced?

A. Yes.

Q. And you always received every bit of compensation that was due you, didn't you, while you were there?

A. Yes.

Q. How many girls were working at the plant on August 21st?

A. About 60 or 65.

Q. Sixty or sixty-five?

A. Yes.

Q. Preceding August 21st—one week preceding August 21st how many were working there?

A. When do you mean?

Q. One week before?

A. It was from fifty to forty.

Q. One week after August 21st how many were working there?

A. I don't know.

Q. Why don't you?

A. Because I did not count them.

Q. Did you count them before?

A. No.

Q. Then you don't know at all, do you?

A. No.

Q. Why didn't you say you didn't know?

BY TRIAL EXAMINER GATES:

Q. Just a minute. I believe at the beginning of your testimony you told us about how much you were making the last few weeks that you worked. I wonder if you mind repeating that again?

A. I made from \$6 to \$9. I will say about \$9.

BY MR. GIROFSKY:

Q. Did you ever make over \$9?

A. No, not after the NRA.

Q. Never?

A. No.

Q. How many hours did you work the last week?

A. I worked about—

Q. Exactly now. You punched your time card, didn't you?

A. Not all the time.

Q. You know and saw your time card each day you worked there didn't you?

A. Yes, I did.

Q. The day that you didn't punch your time clock you saw it the following day didn't you?

A. Yes.

Q. What number of hours did you work the last week you were there?

A. About twenty-four.

Q. Yes. And the week before that, how many hours did you work?

A. I don't know.

Q. You don't know?

A. No.

Q. The week before that?

A. I don't remember.

Q. You received that amount of money which was due you?

A. Yes, I did.

Q. Not less?

A. No.

(Witness dismissed.)

THERESA YEMMA being called as a witness by the National Labor Relations Board upon being duly sworn, testified as follows:

Direct Examination

BY MR. MOSCOVITZ:

Q. Your address.

A. Twenty-two New Street, Somerville, New Jersey.

Q. Were you employed by the Somerset Manufacturing Company?

A. I was.

Q. When?

A. I went to work there in April, 1935.

Q. How long did you work?

A. I worked until August 29, 1935.

Q. Is that the last day you worked?

A. Yes.

Q. Did you work continuously for them up until that date?

A. I did.

Q. Was that the day on which you were alleged to have been discharged?

A. Yes.

MR. GIROFSKY:

I object. Is there an allegation for Yemma? I ask that be stricken from the record.

TRIAL EXAMINER GATES:

Please strike it.

BY MR. MOSCOVITZ:

Q. You worked until when?

A. August 29th.

Q. Were you a member of the Union?

A. Yes.

Q. When did you join the Union?

A. I joined the Union on August 21st at our first meeting.

Q. I show you Board Exhibit No. 10 marked for identification. Is that your application?

A. Yes.

Q. Your signature?

A. Yes.

MR. MOSCOVITZ:

I offer it.

(Mr. Girofsky examined Ex. 10.)

TRIAL EXAMINER GATES:

Admitted.

BY MR. MOSCOVITZ:

Q. What kind of work did you do for the Company?

A. I was an operator.

Q. Did you work piece work or hourly rate, or weekly salary?

A. I did both.

Q. Did both what?

A. I did both. I worked by piece work and by the hour. When we were very busy I worked piece work. I did two or three different things and then when he needed more girls on the floor he would take me off my machine and put me on the floor.

Q. Then you would work hourly rate?

A. Yes.

Q. Did you work for the Company during NRA?

A. Yes.

Q. Did you work for piece work then or on a minimum wage?

A. Piece work I think.

Q. What were you getting?

A. I was making between \$9 and \$11.

Q. Do you remember how many hours a week you worked?

A. During the NRA I was working forty hours a week.

Q. You got between \$9 and \$11 a week?

A. Yes.

Q. Were there any change in the condition of your employment as far as hours and wages after the NRA?

A. The prices were cut after the NRA.

Q. Just once?

A. He kept changing me off and on. I was not on the machine two or three days a week. I would be on the floor and I would do different operations.

Q. So you had no way of calculating your income, your salary?

A. No.

Q. Would you know before the end of the week how much you were going to get?

A. If I asked the bookkeeper.

Q. Otherwise you could not?

A. I could if I stopped to figure out my hours.

Q. And your changes?

A. Yes.

Q. How many hours did you work, a certain number of hours after the NRA each week?

A. We were supposed to work forty hours. But sometimes I would go home at half past four or a quarter to five, or sometimes fifteen minutes before.

Q. Depending upon whether or not you had finished up the day's work?

A. Yes.

Q. Can you tell me how many hours a week you averaged after the NRA?

A. The weeks varied. Sometimes I worked thirty and thirty-five hours a week; sometimes I worked thirty-six hours.

Q. Did you ever work less than thirty hours a week?

A. I think I worked only two days once.

Q. Once you worked two days in a week?

A. Yes.

Q. After that would you say the next period of work was a thirty hour a week?

A. I don't remember.

Q. What is the greatest number of hours you worked a week after the NRA, do you remember?

A. I believe it was forty hours.

Q. That is the most?

A. Yes.

Q. One time you worked two hours a week?

A. No, never two hours.

Q. Two days?

A. Yes, two days.

Q. What was the customary number of hours you worked after the NRA, did you say?

MR. GIROFSKY:

I object.

TRIAL EXAMINER GATES:

I think it is a proper question.

Q. You joined the Union August 21st?

A. Yes.

Q. Before joining the Union had you discussed union with any one of your bosses?

A. No, I never did.

Q. Never after joining the union did you or did any of your bosses discuss it with you?

A. No, but I heard Ruby discuss it in front of me.

MR. GIROFSKY:

I object to any assertion or statements of conversations to any one besides the respondent. It is purely hearsay, not binding upon the respondent.

TRIAL EXAMINER GATES:

Objection is overruled. You may inquire further into that, Mr. Moscovitz.

Q. You say you heard Ruby discuss the Union?

A. Yes.

Q. In your presence?

A. Yes.

Q. With whom?

A. With a friend of mine.

Q. Who was that?

A. Mrs. Pascal.

Q. And was that in your presence?

A. Yes.

Q. Did you hear the conversation?

A. Yes.

Q. What was said?

A. He accused her—

MR. GIROFSKY:

I object to this conversation. It is not binding on respondent. It is hearsay.

TRIAL EXAMINER GATES:

I understand the objection includes this whole line.

BY THE WITNESS:

A. He accused her of organizing a union in the

shop. She refused to acknowledge organizing it. And he told her that she should go home. It was noontime at twelve o'clock. He told her to go home until further notice and he never sent for her again.

Q. Do you remember about when that was?

A. That was, I believe, three or four days before our first Union meeting.

Q. Three or four days before your first Union meeting. Were you discharged before the first Union meeting or afterwards?

A. After the first Union meeting.

Q. When was the date of the first Union meeting?

A. August 21st.

Q. Did you attend the first Union meeting?

A. Yes, I did.

Q. It was then you signed up for this?

A. —

Q. What happened after the first Union meeting, as far as you are concerned?

A. I went to work. But Ruby kept putting me off. He kept saying, wait and wait. He would let me sit at my machine and wait. He had lots of heavy work I was experienced at. Because I had worked at another shop doing that. I told him that and he kept saying wait. I would get tired of sitting and he would keep telling me wait. I would go home early on those days he told me to wait. On August 29th, the day after the second meeting, I went to get my pay. I had not worked for two or three days. I went in to get my pay and Ruby told me he did not have any more work for me. He said I was causing too much trouble.

Q. Did you ask him to explain that?

A. No, I did not.

Q. Had you been causing any trouble?

A. No.

Q. Had you been in any trouble at the plant?

A. No.

Q. Had you been disciplined by any one?

A. No.

Q. Hadn't you been called up and bawled out?

A. No.

Q. That day after he spoke to you you went?

A. Yes.

Q. Have you worked any place since?

A. Yes.

Q. Where?

A. I worked in Trieber's.

Q. How long?

A. From—I don't know—a couple of weeks in September until Christmas, December.

Q. Did you work all of October?

A. Yes.

Q. All of November?

A. Yes.

Q. Up until Christmas?

A. I think it was until Christmas and two or three days after Christmas.

Q. All of December?

A. Yes.

Q. Do you remember how much you made?

MR. GIROFSKY:

I object. It is not binding on the respondent; has no materiality or relevancy.

TRIAL EXAMINER GATES:

I don't know what it is.

MR. GIROFSKY:

What relevancy has her wages in the Treiber Factory to this issue?

TRIAL EXAMINER GATES:

Let's see where it leads.

Q. Can you remember what you received in Treiber's?

MR. GIROFSKY:

I take exception.

A. I was making up to fifteen dollars a week.

Q. How much did you make during the whole time that you were there?

A. It would be on an average of thirteen dollars.

Q. Did you work for any one else?

A. M. H. Fishman, the department store in Somerville.

Q. How long?

A. I worked there an occasional Saturday.

Q. How many Saturdays all told?

A. I worked, I believe all the Saturdays in October, November and December.

Q. All the Saturdays in October, November and December?

A. Yes.

Q. And there you were doing entirely different work from Mr. Fainblatt's?

A. No. That was up in the department store.

Q. You were doing different work than when you worked for Mr. Fainblatt?

A. Yes, of course.

Q. When you worked for Mr. Treiber were you doing the same kind of work?

A. I was operating a machine.

Q. When you worked in the department store do you remember how much you got?

A. It depended upon the hours I worked. If I worked thirty hours I received twenty-one cents an hour.

Q. Did you always work ten hours?

A. Mostly on Saturdays.

Cross Examination

BY MR. GIROFSKY:

Q. What time did you go to work at Fishman's in the morning?

A. I did not go in the morning. I went at twelve o'clock.

Q. When did you leave?

A. At ten o'clock.

Q. How much time off for your evening meal?

A. One hour.

Q. How much did you receive from Fishman?

A. Well, if I worked nine hours I got \$1.89. If I worked twelve hours I got \$2.52.

Q. For ten hours?

A. Yes.

Q. Now, when you went to work for the Somerset, you had never experienced this work before? You were not an experienced operator?

A. Yes, I was.

Q. Where did you work before you went into the Somerset.

A. In Treiber's.

Q. How long?

A. I worked there about six months.

Q. Why did you leave Treiber's?

A. Because he did not have enough work to keep all the girls going.

Q. He told you he would have to let you go?

A. Yes.

Q. That was not unusual then for you to hear the boss say there is nothing more to do?

A. Yes. No.

Q. Yes or no?

A. No.

Q. How many hours a day did you work at the Treiber plant?

A. Seven and a quarter, or seven and a half hours. I don't remember.

Q. And how many days a week did you work there?

A. Five days a week.

Q. And you were paid there according to the number of garments you produced, is that right?

A. No.

Q. You were not?

A. No.

Q. What were you doing there?

A. I was working on the lumber jackets.

Q. That is paid on the hourly basis?

A. Yes, that is.

Q. You were not an operator there?

A. Yes, I was.

Q. Now, the Treiber plant manufactures a different garment than the Somerset, is that so?

A. In one way.

Q. Yes, and the Somerset plan garments were all new to you?

A. Half of it.

Q. Half of it?

A. —

Q. And you had to learn on those new articles, didn't you?

A. Well, yes.

Q. Yes, is that right?

A. Yes.

Q. And you were paid as a learner on those new articles weren't you?

A. I was not told that I was paid as a learner.

Q. But you were a learner. Yes or no?

A. No.

Q. Now, when you were working at the Treiber plant after you left the Somerset plant did you consider yourself an employee of the Treiber plant?

A. Certainly.

Q. At the same time, did you consider yourself an employee of the Somerset plant?

MR. MOSCOVITZ:

I don't think it makes any difference what she considered. Facts speak for themselves as far as the relationship is concerned.

TRIAL EXAMINER GATES:

It makes no difference. You may proceed.

Q. Did you consider yourself an employee of the Somerset plant at the same time?

A. Yes.

Q. An employee of both plants at the same time?

A. Yes.

Q. Why?

A. Because Treiber's did not have enough work to keep me a whole year and he had told me that at the beginning of the year.

Q. Did you ask him when you went there to work?

A. I knew from previous experience.

Q. At Treiber's?

A. Yes.

Q. Did you ask Mr. Fainblatt when you went to work there if he had enough work to keep you busy a whole year?

A. I asked Ruby.

Q. You did not ask Mr. Fainblatt?

A. No, because Ruby was the foreman.

Q. You were not promised steady employment for a whole year?

A. Ruby told me they worked a whole year straight.

Q. Every day in the week?

A. Yes.

Q. Did you know any girls that worked there before?

A. Yes.

Q. You knew that some of them were off a few days at certain weeks?

A. At that time they were working steady.

Q. Sometimes during your stay there work dropped off, didn't it?

A. It dropped off because he wanted it to.

Q. Did work drop off?

A. Yes.

Q. And when was the first meeting of the Union that you attended?

A. August twenty-first.

Q. Who invited you?

A. The girls.

Q. What girls? Name them.

A. The girls of Fainblatt's shop. There were many. I could not name them.

Q. How many?

A. Who invited me?

Q. Yes.

A. I think there were two girls who asked me to go.

Q. You can't name them?

A. Yes, I can name them. Ethel Rice and Lorraine Heitz.

Q. Where was that meeting held?

A. In Harmony Hall, Raritan, New Jersey.

Q. Who was there?

A. The majority of the girls.

Q. Who was there?

A. The girls and Mr. Posner.

Q. Did you count them?

A. No, I did not.

Q. Name them.

A. All of them?

Q. Name the girls.

A. There was Ethel Rice, Fay Katz, Lorraine Heitz, myself, there was Marie Morano, and Nan Santoro; there was Sophia. I don't know a lot of their last names. I will give you ~~first names~~. Sophia, Carmela, Ida; there was two girls by the name of Julia, and there were two girls by the name of Josephine, and one by the name—

Q. What was their last names?

A. I don't know.

Q. You mingled with those girls for several months?

A. Yes.

MR. MOSCOVITZ:

Just a moment. I respectfully request that Mr. Girofsky stand a little way from the witness and not intimidate her.

MR. GIROFSKY:

If you will excuse all the girls in this room I will.

MR. MOSCOVITZ:

I made a request and I think Mr. Girofsky should accede to it. I don't think it is fair.

TRIAL EXAMINER GATES:

You may proceed.

MR. GIROFSKY:

If this witness is telling the truth there is no need for her to be worried or nervous.

MR. MOSCOVITZ:

She is telling the truth. How can she stand up under that sort of coercion?

MR. GIROFSKY:

You know I am not cruel.

BY MR. GIROFSKY:

Q. You did not count the number of girls?

A. No.

Q. When was the next meeting?

A. One week later. The week of the twenty-eighth.

Q. You were not employed at that time?

A. I was.

Q. When you joined the Union did you tell your bosses that you joined?

A. No, he knew who had joined.

Q. I did not ask you that. Answer my question.

A. No.

Q. When you first sought employment there no one asked you if you belonged to the Union did they?

A. No.

Q. You were satisfied with the work there—to work there when you went for employment?

A. I had to.

Q. No one kept you from going elsewhere for employment did they?

A. No, but I had tried before that.

Q. Yes, or no.

A. No.

Q. You had trouble before that?

A. I had tried before that and could not get employment anywhere else.

Q. Mr. Fainblatt did you a favor in giving you employment?

A. I did him a favor.

Q. You consider yourself so good that you are doing an employer a favor by working for him? Yes or no?

A. No.

MR. MOSCOVITZ:

I must ask again that he not browbeat the witness, because the witness is now obviously half broken down and crying as the result of this sort of questioning and I don't think it should be permitted.

TRIAL EXAMINER GATES:

I am inclined to agree.

MR. MOSCOVITZ:

It is a not a question of the employer doing the employee a favor, or the employee doing the employer a favor.

MR. GIROFSKY:

I wish the Act would take care of the employer as it takes care of the Union.

BY MR. GIROFSKY:

Q. And did you count the number of girls at the next meeting you attended?

A. No, I did not.

Q. You don't know how many were there, do you?

A. There were more than the last time.

Q. If you did not count them you can't know how many were there?

A. No.

Q. Have you gone back to the Treiber plant for employment since you were last there?

A. No, I called him up.

Q. There was no work?

A. No.

Q. That is a union shop?

A. Yes.

Q. Is the plant closed?

A. No.

Q. How many girls working there?

A. There are about twenty-five working there now.

Q. When he is operating in the busy season how many are working there?

A. About fifty to sixty girls.

Q. That is the most?

A. I believe so.

Redirect Examination

BY MR. MOSCOVITZ:

Q. Do you know whether or not Mr. Fainblatt had any spies at your union meeting?

MR. GIROFSKY:

I object to this question. I think it is grossly unfair, it is immaterial and it is hearsay.

TRIAL EXAMINER GATES:

It certainly is not immaterial. Objection overruled.

MR. GIROFSKY:

Mr. Fainblatt is Mr. Moscovitz' own witness in this proceeding so far. Unless Mr. Moscovitz wishes to neutralize Mr. Fainblatt's testimony.

TRIAL EXAMINER GATES:

Please proceed.

MR. GIROFSKY:

I take an exception.

A. There was one girl there. Her first name was Wanda. Quite a big girl with dark curly hair. I never knew her first name. She worked on a double needle machine. She came to the second meeting. Now she is working in the shop but never came to another. She even signed one of our cards.

MR. GIROFSKY:

The question is being answered. I wish this witness would be permitted to proceed.

TRIAL EXAMINER GATES:

Proceed.

BY THE WITNESS:

A. What else do you want me to say.

Q. Is that the only answer?

TRIAL EXAMINER GATES:

Q. Do you know whether there was any one there?

A. Yes, one girl.

Q. Do you know whether or not she was there for the purpose of reporting back to Mr. Fainblatt?

A. I think so.

~~Q.~~ Do you know.

A. No, I don't know.

MR. GIROFSKY:

I ask that this witness be instructed to give truthful and definite answers and not conclusions or presumptions or inferences or thought.

TRIAL EXAMINER GATES:

It is being given.

MR. GIROFSKY:

It is unfair to build the record up with this tripe, so to speak.

MR. MOSCOVITZ:

Who are you referring to, the witness or the testimony?

MR. GIROFSKY:

Both the questions of the Counsel for the Board and the witness's answers.

MR. MOSCOVITZ:

Thank you, Mr. Girofsky.

BY MR. MOSCOVITZ:

Q. Can you give me any other information you know of yourself on that point?

A. No.

Q. That is all you know?

A. No—yes.

Q. You simply surmised it on the basis of what she did and what she is doing, is that right?

A. Yes.

Recross Examination

BY MR. GIROFSKY:

Q. That girl joined the Union didn't she by signing a card?

A. I don't know.

Q. She signed a card, didn't she?

A. Yes.

Q. You did not pay any dues to the Union did you?

A. No.

Q. She didn't pay any dues to the Union?

A. No.

Q. That girl went back to work, didn't she?

A. Yes.

Q. She is still working there today?

A. I think so.

Q. —

A. Yes.

TRIAL EXAMINER GATES:

Q. Did she go out on strike?

A. No.

TRIAL EXAMINER GATES:

Let us have a five minutes' recess.

(Thereupon, at 10:05 a recess was taken until 10:10 a.m.)

MR. MOSCOVITZ:

I would like to recall Mr. Fainblatt.

BENJAMIN FAINBLATT was recalled to the stand.

Direct Examination

BY MR. MOSCOVITZ:

Q. Mr. Fainblatt, how many people were working at your plant in production, that is actually in production, not counting boys who were engaged in shipping, or general work on the day of the strike?

A. I could not tell you. I have a list here. The list will tell you.

MR. GIROFSKY:

This question has been gone into.

TRIAL EXAMINER GATES:

I think that is covered in the record. In order to be certain I have no objection if you inquire into it briefly.

Q. Do you remember how many people you testified had been working at the plant on the day of the strike?

A. We have the list here.

Q. During this period from August twenty-first to September eighteenth?

A. I have the slightest recollection that we just happened to need a few more girls, two or three girls more. I have a slight recollection that one or two days some of my former girls were laid off. There was not work enough for some girls. They have not reported to work. And while they have not reported to work other girls happened to come along and ask for work, and I think I put them to work. Those girls went out on strike, the entire branch.

Q. You don't know that?

A. Yes.

Q. What girls was that?

A. The names? The names I don't know.

Q. Would your record show the number you had to certain dates working for you?

A. My records shows here. (Referring to Time Book)

Q. Take August sixteenth. From August sixteenth to August twenty-ninth.

A. It shows the girls who are working.

Q. How many.

A. Some worked a day—

MR. GIROFSKY:

I think you ought to explain the record.

BY THE WITNESS:

A. While some girls in that period between August sixteenth and August twenty-third might have worked, or rather let us say that worked one—

BY MR. MOSCOVITZ:

Q. Some of these girls may have worked one hour, some may not have worked three days, and some may not have worked at all?

A. They might have worked some including that week. It shows that this girl made twelve hours in that week, where the next day she has not made nothing. Consequently we have to go and check up exactly and tell you what each and every day.

Q. I want to give you every benefit of your understanding. I this correct—I will ask you this question—that your book showing that may indicate that some of these girls on the payroll will have worked a few hours one day, maybe not at all the next day, maybe a couple of days during the week, maybe five days, depending upon the amount of work in that week..

A. Exactly. If I had work for them.

Q. We are straight on that. Now I want to know this: Taking that into consideration, how many girls were on your payroll for that period?

A. That week. That will show you. The payroll will show you how many that week.

(The Witness counted the names on his book.)
Sixty-one..

Q. That is sixty-one. So the payroll book will show on August, the week of August sixteenth, being the week of August sixteenth,—that means to August twenty-third, 1935—

A. Up to that.

Q. Up to August twenty-third. Now, out of that number, during the period, which of these girls worked in your office?

A. None of those girls worked in my office.

Q. How many girls do you have in your office?

A. One..

Q. What is her name?

A. Her name is Anna.

Q. Anna what?

A. I will look. Anna.

Q. Was she working for you—wasn't Jean Saunders the bookkeeper then?

A. Oh, yes.

Q. August sixteenth?

A. Jean was.

Q. She was your bookkeeper?

A. Yes.

Q. Which of these people were doing work other than manufacturing?

A. None of those people don't.

Q. They are all production?

A. All for the production of the garment, which belonged to the production of the garment.

Q. Were any of these people doing shipping?

A. No.

Q. Who did the shipping. How about Eddy?

A. Eddy all round man.

Q. Are they in this list? Eddy and Andy?

A. Certainly they are. Eddy, Tony, Ruth, Jimmy; here is Charley Grill.

Q. What does Charley Grill do?

A. He is a cutter.

Q. And Jimmy?

A. Jimmy is a general man. He is not there any more.

Q. He is not an operator?

A. A general man.

Q. And Ruby?

A. Ruby is the floorman.

Q. Jean?

A. Bookkeeper.

Q. Al?

A. Al does general work.

Q. Eddy?

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A. The same thing. Tony the same thing. All general work.

Q. Mrs. Smith?

A. She was a finisher.

TRIAL EXAMINER GATES:

Q. On counting those sixty-one, you didn't count any of those?

A. No, I did not. You want me to count them?

BY MR. MOSCOVITZ:

Q. You are including Ruby and Mrs. Ruth who was a floorlady?

A. The examiner is asking for that. I did not include them in the sixty-one.

TRIAL EXAMINER GATES:

Q. How many of those are actually on production? If he is a cutter he would be.

A. He is a production man.

TRIAL EXAMINER GATES:

Q. Would Joe be?

A. He is a cutter. Yes.

TRIAL EXAMINER GATES:

Q. Those are the only two cutters, except Mrs. Smith?

A. She is a finisher. She does a class of work that has to be sewed by hand. We just call her in occasionally to work.

TRIAL EXAMINER GATES:

Q. There are about four all round people there?

A. Yes. They all belong to production.

MR. MOSCOVITZ:

Is that an afterthought? That has never been alleged before.

TRIAL EXAMINER GATES:

Nobody is alleging anything. I am merely asking some questions here.

TRIAL EXAMINER GATES:

Q. Ruth is Mrs. Evans. Is that right?

A. Yes.

Q. She is the floorlady?

A. Yes.

Q. Ruby is the foreman?

A. Yes.

Q. All the rest work on production?

A. Yes.

BY MR. MOSCOVITZ:

Q. Al does not work on production?

A. Al works on the floor.

Q. He is a general man. Is he a cutter?

A. No.

Q. Is he an operator?

A. No.

Q. Is he a trimmer?

A. No. He is doing anything that is necessary in the place, carrying from one to another. Cleaning the floor, and so forth. What we call general work.

Q. But he is not engaged in the production of the article itself?

MR. GIROFSKY:

The answer speaks for itself.

MR. MOSCOVITZ:

If you want to cross examine this witness you may. I want to get this straight.

MR. GIROFSKY:

I wish you would define production.

MR. MOSCOVITZ:

Production I think is pretty clear. I don't suppose carrying around a basket would be production.

MR. GIROFSKY:

I think it is a phase of it.

BY MR. MOSCOVITZ:

Q. Al you say is a general man. And Eddy?

A. Yes, and Tony is a general man, and Jimmy is a general man.

Q. And Mrs. Smith is a floorlady?

A. Mrs. Smith is a finisher.

Q. Is Mrs. Smith the only finisher in the plant?

A. She is the only finisher.

Q. And you use her when you need her?

A. Yes.

Q. But you have no other finisher?

A. No.

Q. The finisher's work is entirely different to the work of any of the other girls?

A. It is a product we need to produce the garments.

Q. But it is an entirely different job?

A. No, it is not. She sews on buttons. She sews on snaps. By hand. Hooks and eyes.

Q. Is the wage scale the same as the others?

A. She does piece work. The price made on the production of that.

TRIAL EXAMINER GATES:

Q. Do you have any other girls? Look through the list. Have you any other girls that do the same work that Mrs. Smith does?

A. I will tell you we do and we don't. For instance, this Evaline Price is a floor girl. When we have too much work for Mrs. Smith she will go back on this here production and will sew also snaps and get paid as a piece worker.

BY MR. MOSCOVITZ:

Q. Mr. Fainblatt, you name sixty-one people and

then below that there are a number of others. Why do you differentiate?

A. I really don't know. This is the way the book-keeper happened to enter it. But at the same time they are an employee. I have to call them an employee. She shows they have been paid.

Q. Your next week starts August thirtieth?

A. You can see.

Q. And it goes to September seventh.

A. You can see it here.

TRIAL EXAMINER GATES:

Q. Is that for the two weeks, August sixteenth?

A. August sixteenth to the twenty-third.

TRIAL EXAMINER GATES:

Q. Should you not have one starting the twenty-third?

A. Monday is the twenty-third.

MR. MOSCOVITZ:

This is the twenty-third. It goes over to September seventh.

TRIAL EXAMINER GATES:

Q. Do these figures over here cover the week of August twenty-third here for the same people as are over on that side?

A. No. I can explain it all. Here on this side is Rosa Martini, here has paid three hours one day on Monday, and eleven hours total time. On Thursday she made a day. It made the eleven hours. She earned \$2.89 for eleven hours. Then the following week, which is August twenty-third, you see the number goes right across. She made three days. That makes thirty-four. She made that week twenty-nine hours which she earned in those twenty-nine hours, \$8.64. For instance, here was Margaret Alden, where she worked on the week of August six-

teenth, but she has not worked on the week of August twenty-third.

BY MR. MOSCOVITZ:

Q. I think that is clear now from your description. How many people were working during that week?

A. Which week?

TRIAL EXAMINER GATES:

He has already testified.

Q. He has testified about the week of August twenty-third. Now I want to know the following week.

A. We have got it here. You see the names go straight across.

Q. I want to know from August 23rd up to the next week. How do you get your names? Does the book go backwards?

A. (Counting the names) Forty-seven worked the week of August 23rd.

TRIAL EXAMINER GATES:

Q. I think you dropped ten there when you turned a page. I thought it was fifty-five.

A. (Referring again to the book) Fifty-eight.

BY MR. MOSCOVITZ:

Q. That will show fifty-eight up to August twenty-third?

A. Yes, besides those.

Q. Who was dropped?

A. I could not tell you.

TRIAL EXAMINER GATES:

Q. Mrs. Smith and Charlie Grill are not there.

A. Charlie Grill is not here.

BY MR. MOSCOVITZ:

Q. What is the total number?

A. Eight and fifty-eight.

TRIAL EXAMINER GATES:

Q. That eight would include one cutter, five general men, Ruby and Mrs. Evans?

A. Ruby and Mrs. Evans is two. The bookkeeper is three. Cutter is four. There were not five general there. There is only one cutter in the place.

TRIAL EXAMINER GATES:

Q. You would also include Mrs. Evans and Ruby?

A. Yes, Mrs. Evans, Ruby and the bookkeeper.

BY MR. MOSCOVITZ:

Q. Mrs. Evans, Ruby, the bookkeeper and the cutter?

A. Yes.

Q. Take the next week. That would be August thirtieth.

A. (Referring to the book) Fifty and eight besides.

Q. That eight includes the same people that you referred to before as a general man, cutter, Ruby, floorlady?

A. Yes, everything.

Q. The following week. The week of September seventh.

A. (Referring to the book) Fifty-two and nine in addition.

Q. The nine additional are who?

A. I see I have the name of Larry.

Q. There was an additional girl came in during that week?

A. Yes.

Q. In any event, that is the figure?

A. Yes.

Q. Now, the following week.

TRIAL EXAMINER GATES:

Q. You don't know who Larry is, do you?

A. No, I don't. We took him in for a couple of days. But he has got to appear on the pay roll. We may run short of certain help for certain productions. We take in somebody for a day or two. Not what we call a permanent employee, merely what we call for the time being. But at the same time it must appear in our pay roll. This is why you may find more or less, and less and more.

Q. But that would show on the pay roll?

A. Pardon me. Certainly we have to call them an employee. He is given pay for services. This employee is not employed as a permanent employee and consequently he is not replacing anybody of my permanent employees. That is what I want to emphasize, Mr. Examiner.

BY MR. MOSCOVITZ:

Q. What is the following week, September sixth to fourteenth?

A. (Examining the book) Well, let's see.

BY MR. MOSCOVITZ:

Q. Before you go to the next figure, which are new employees?

A. I can't tell. I can only tell by comparing the faces to the records. The names I don't know.

Q. In addition to that you have Tony and Jimmy, Al, Ruby, Ruth and Eddy. I want to get it straight once for all. Adaline Potter should be included in the figure.

A. Here we lost one.

Q. It would be fifty-four. In addition to that you also have Tony who is a general man, Ruth, and Jimmy who is a general man, and Al who is a general man?

A. Yes.

Q. What did Jimmy do?

A. Jimmy was cleaning the floor, putting on belts on the machines, cleaning the machines. That was Jimmy. He was not a worker.

Q. What did he do, work on buttons?

A. He put on eyelets.

Q. What else?

A. Different things. All general work in the factory.

Q. Did he work on the material itself?

A. Yes. You can't put on eyelets unless you put it on the material.

Q. Now Al, he did the same sort of thing?

A. On the same work.

Q. Ruby is the foreman, and Ruth the floor-lady. Ann is the bookkeeper. Eddy?

A. Eddy is also a general boy. Eddy was the helper downstairs.

Q. Was he working during that week?

A. He got paid. Don't you see. A couple of days and I paid \$4.

Q. Why isn't there total time for Ann?

A. They never punch a clock. When they come for general work they never punch no clocks. There is no time on it.

TRIAL EXAMINER GATES:

Q. Let's do one more week. September twenty-first.

A. (Examining the book) Forty-eight, plus eight. That is fifty-six.

BY MR. MOSCOVITZ:

Q. Of that eight that Mr. Fainblatt has just referred to we have again Tony, Jimmy, Al, Ruby,

Ruth and Eddy. Is that right? Ruby being the foreman, Ruth being the forelady. Is that right?

A. Yes.

Q. Mr. Fainblatt, during the periods that you have just been going over in your book, you say that there were some new people taken on to do some work?

A. I believe so. To my best recollection.

Q. And that their names would appear in your pay roll book?

A. Yes.

Q. Mr. Examiner, I would like to be sure that we have a complete record on this thing and be able to make the proper comparison, read into the record the names of those on the payroll during the period specified so that we might then have a basis for comparing those in the union during the same period and thus determine the percentage, otherwise I am afraid the record on that question will be ambiguous.
TRIAL EXAMINER GATES:

Q. How much do you want to read into the record, Mr. Moscovitz?

MR. MOSCOVITZ:

I would say the names properly explained should be in the record from August fourteenth through September twenty-first.

TRIAL EXAMINER GATES:

August sixteenth.

MR. MOSCOVITZ:

August fourteenth or sixteenth through September twenty-first. We have the payroll dates start.

TRIAL EXAMINER GATES:

That is the payroll period ending then.

MR. HALPERIN:

I don't know why Mr. Moscovitz wants to start August fourteenth. It seems to me the proper time to start would be the time the strikers were out on strike.

MR. MOSCOVITZ:

In answer to Mr. Halperin's statement, why you would want from September twenty-first on, it might become necessary to make the determination of a date prior to September eighteenth for the purpose of majority representation. We have the question did Mr. Fainblatt recognize a representative of the majority of the employees prior to the date fixed by the strike. It is conceivable that is it.

MR. HALPERIN:

I would like to amend my objection and make it even stronger to this effect, that the date to be read in the record, I think the stenographer can give me the exact date when the strikers voted upon their choice of representatives,—it should be that date. The comparison should be made.

MR. MOSCOVITZ:

We are saying the same thing.

MR. HALPERIN:

Except you are going back to August fourteenth.

MR. MOSCOVITZ:

Where would you rather I would go back to?

MR. HALPERIN:

The date that shows they are represented.

MR. MOSCOVITZ:

You don't want the record to show whether or not the majority of the employees, designated Mr. Posner as their representative for pur-

poses of collective bargaining any time before September eighteenth, is that right?

MR. GIROFSKY:

There is no testimony here as to whether or not there is a majority.

MR. MOSCOVITZ:

We certainly expect to have such testimony in the record, conclusively one way or the other, before we close our case. This is part of our procedure. I made this request in accordance with my plan of proceeding. I just want to get straight the suggestion of counsel. Is my position clear?

TRIAL EXAMINER GATES:

Surely, it is clear to me.

MR. HALPERIN:

It is our contention at the date these persons walked out, on the date they chose their representative as the basis of comparison under the Act, of when the fifty per cent is computed. In other words, if five or six girls were laid off prior to the date these girls chose their representative why they could not properly make a complaint to their representative. That is the contention of counsel.

MR. MOSCOVITZ:

Of course, they could, if they were laid off. A person laid off in good faith is considered as being in a suspended state of employment with a certain interest in continued employment and thus can be considered as a part of a roster of those who choose someone for the purposes of representation.

TRIAL EXAMINER GATES:

As I understand it you would like to have the

names of all the employees of two or perhaps more dates. At least two dates.

MR. MOSCOVITZ:

I would like to have it from August fourteenth through September eighth.

TRIAL EXAMINER GATES:

For each week.

MR. MOSCOVITZ:

Each payroll week, so there can be a basis of comparison, to see who were new and who were dropped out and so on. Whether they were additional employees. Miss Yemma, for instance was laid off. That might mean a difference in the total number. Someone might have been taken on to take Miss Yemma's place, and again you have a difference in the roll. I don't see how you can have the two pictures before you unless that is done, under the circumstances. It is a little laborious. We could not possibly stipulate on it.

MR. HALPERIN:

If you would take our list of those who were left.

MR. MOSCOVITZ:

That is typewritten?

MR. HALPERIN:

Yes.

MR. GIROFSKY:

Mr. Fainblatt's statement is taken from his book.

TRIAL EXAMINER GATES:

Q. Mr. Fainblatt, of those included in your payroll for the period ending September twenty-first, how many went out on strike on September eighteenth?

A. According to my book I find twenty-two. This is the best that I can make out on the book. Of course, I have a new bookkeeper and that bookkeeper, of course, is not so acquainted with—at that time, she was not so familiar with all the employees. How many is on my list on that day. We have only twenty-one, according to the bookkeeper, but I think it should be twenty-two.

MR. MOSCOVITZ:

Q. That does not include those who were, as you say, laid off, and we say discharged, before the date of the strike?

MR. HALPERIN:

Q. That is those who walked out.

BY THE WITNESS:

Q. The Examiner wanted me to check up on the books.

MR. MOSCOVITZ:

My request is before the Examiner that Mr. Fainblatt read into the record from August twenty-first to September twenty-first, we will say, the names of those on the employment rolls that may be a basis of comparison to show the new people taken on and people who may have been dropped.

TRIAL EXAMINER GATES:

There was no possibility of arriving at a stipulation on this?

MR. HALPERIN:

Evidently no. Our list is made up from Mr. Fainblatt's books they gave us. He has a list of those that went out.

MR. MOSCOVITZ:

Why should there be any objection to Mr. Fainblatt reading from the original record?

TRIAL EXAMINER GATES:

There is no objection so far as I am concerned.
It is a question of expedition.

MR. MOSCOVITZ:

I will accept any suggestion any one can make which will expedite this in a manner which will properly bring from the record the true picture.

MR. GIROFSKY:

If you don't want to accept this you will have to proceed as you desire.

MR. MOSCOVITZ:

Put the book in the record.

MR. HALPERIN:

It will have to go to Washington.

MR. MOSCOVITZ:

We will make photostatic copies of the necessary pages and return it. There is an offer made in good faith which will dispose of the entire matter. Take the appropriate pages, the pages we are inquiring after in the book and photostat them and return them to Mr. Fainblatt within twenty-four hours, with the understanding that the photostat sheets be made part of the record, of course.

TRIAL EXAMINER GATES:

Is that satisfactory to you?

MR. GIROFSKY:

No.

MR. MOSCOVITZ:

Counsel for the respondent will not accede to that suggestion.

MR. GIROFSKY:

If you want me to proceed to remember the names.

MR. MOSCOVITZ:

Either way. That would expedite the entire thing because the names are going to be read any way. A photostatic copy of it would stop the proceedings at this point. You might be able to have it done in town before the day is over, if there is any photostatic equipment here. I could have it done in New York and send it back to you. It would shorten the proceedings an hour.

TRIAL EXAMINER GATES:

I, personally, would favor that.

MR. MOSCOVITZ:

We are not interested in the amounts they received. We could have a cardboard placed over that. It is a question of names and dates.

TRIAL EXAMINER GATES:

Perhaps Mr. Girofsky would like to discuss this with Mr. Fainblatt. We will have a five minutes' recess.

(Thereupon at 11:15 a recess was had until 11:20).

MR. MOSCOVITZ:

It is hereby agreed and stipulated between counsel for the respondent and myself that the payroll book which is now being furnished by Mr. Fainblatt of Somerset Manufacturing Company have certain pages, hereinafter referred to photostated, the photostated pages to be incorporated as part of this record. The pages start with week ending August Sixteenth, 1935, through September twenty-first, 1935. It is also agreed and stipulated that the wage references which will appear on the photostated pages shall not be included as part of the record.

It is further understood that the record designated as the time book, which we have been referring to in this stipulation, shall be turned over to the stenographer in this proceeding who will take it with her and arrange for the photostating and also assume the responsibility for returning the time book to Mr. Fainblatt immediately after photostating. Of course, the time book refers only to the Somerset Manufacturing Company. An explanation of Somerset Manufacturing Company can be gotten by referring to the stipulation previously entered into between counsel for the respondent and the Government.

Cross Examination

BY MR. HALPERIN:

Q.- Will you refer to your book, Mr. Fainblatt and tell me the last date that Miss Fay Katz was employed by you?

A. September eleventh.

BY MR. MOSCOVITZ:

Q. That is the last day she worked?

A. Yes.

BY MR. HALPERIN:

Q. What day did she receive her pay?

A. The following week, on Thursday.

Q. That would be the twenty-first?

A. Our week's work is figured from Monday. If Thursday was the nineteenth, then she received pay on the nineteenth. Whatever they work this week they get paid for the following week on Thursday.

Q. Miss Ethel Rice?

A. The last day she worked was Friday.

BY MR. MOSCOVITZ:

Q. Was she working August 28th?

A. No, she was not.

Q. The last day she worked was August 16th?

A. Yes.

Q. She was paid when?

A. The following Thursday.

Q. The twenty-second?

A. I suppose so.

Q. Theresa Yemma?

A. August 21st.

Q. She got paid when?

A. She got paid—

BY MR. MOSCOVITZ:

Q. Wouldn't she get paid for the week ending August 23rd when everyone else got paid? She was out on Wednesday.

A. She would not get paid the same week. She would get paid the following week.

BY MR. HALPERIN:

Q. It was August 29th?

A. Yes.

Q. Mary Gecik?

A. She worked until August twer first, and was paid the following week, the twenty-fourth.

Q. Lorraine Heitz?

A. She was Lorraine Vones who later married and was known as Lorraine Heitz. The last day she worked was Wednesday, August twenty-first, and was paid on August twenty-ninth.

Q. Angelina Matteis?

A. August twenty-ninth, and she was paid August twenty-ninth.

Q. Mary Demko.

A. July twenty-sixth, and she was paid on August first.

Q. Sylvia Millano?

A. July 26th. She was paid on August second.

Q. Mayme Ross.

A. July twenty-eighth, and got paid the following week, August fourth.

Q. Frank Ross.

MR. MOSCOVITZ:

A. He is not in it at all.

MR. HALPERIN:

Just for the purpose of the record.

(It was stipulated between counsel that Frank Ross is not to be included as one of the members of the Union in this case for the purpose of collective bargaining.)

BY MR. HALPERIN:

Q. Let's go to Elizabeth Schaka.

A. August twenty-first; paid on August twenty-ninth.

Q. Mary Petrone. Sometimes known as Marie Thomas.

A. Mary Thomas, July twenty-fourth. And she was paid July thirtieth.

Q. Jean Colenda.

A. August twentieth and paid on August twenty-ninth.

Q. Mrs. Gutooski—Lottie Gutooski.

A. August ninth. Paid on August fifteenth.

Q. Vincent Macastro.

MR. MOSCOVITZ:

Jimmy is being left out of this calculation.

BY MR. HALPERIN:

Q. Magdalena Pisane.

A. July twenty-eighth, and was paid July third.

Q. Josephine Herman.

A. September thirteenth. Paid on September nineteenth.

Redirect Examination

BY MR. MOSCOVITZ:

Q. I just want to ask one very simple question. Mr. Fainblatt, you are still engaged in business in Somerville?

A. Yes.

Q. And the same line of work?

A. Yes.

Q. And it is necessary for you, is it, according to your capacity of business to take on people and possibly at times lay people off, is that right?

A. Sometimes we lay people off, when we don't need so much people.

Q. How many people have you in your business experience in Somerville aside from the people who are involved in this case as supposed to have been discharged?

A. I don't understand.

Q. Aside from the girls who were named in this case under Section 8, Sub-section 3 of the Complaint, have you ever discharged anybody?

A. I don't know. I don't understand what you mean.

MR. GIROFSKY:

What is Section 8.

MR. MOSCOVITZ:

I will make it a little clearer. I am trying to be too expeditious I am afraid. The complaint named certain girls, Elizabeth Scheka, Lorraine Heitz, and others in Paragraph three

of the complaint. The Board takes the position that these people were discharged and I understand that it is your position that they were not discharged. Now, aside from these girls have there been any other girls that you have discharged?

A. I don't remember.

MR. GIROFSKY:

The testimony is that he has not discharged any girls.

BY MR. MOSCOVITZ:

Q. And you have not discharged any girls?

A. No.

Q. The girls that we have been going over in this list with your counsel just now are girls who have been laid off?

A. Yes.

Q. And they are not discharged?

A. No.

Q. They are laid off?

A. Yes.

BY MR. HALPERIN:

Q. In other words, work was slow, Mr. Fainblatt, and you just laid them off?

A. Yes.

(Witness dismissed).

HARRY A. POSNER was recalled to the stand.

Direct Examination

BY MR. MOSCOVITZ:

Q. Do you have records, Mr. Posner, in your

possession of members of the organization involved in this controversy?

A. Yes.

Q. Are the persons named in those records persons who went out on strike September 18, 1935 in the Somerset Manufacturing Company?

A. Yes.

Q. Are they also persons alleged to have been discharged by the said Company?

A. Yes.

Q. Are they also persons who may have been laid off by the said Company?

A. Yes.

Q. Are such records as you may have records which are kept in your possession?

A. Yes.

Q. Are you in full control and are you fully responsible for them?

A. Yes, sir.

Q. Do the records contain the original signatures of the members?

A. Yes, sir.

Q. Written in their own handwriting?

A. The signatures are all in their own handwriting.

Q. That is the question, just answer the question. The signatures are all in their own handwriting?

A. Yes.

Q. And so far as other writing and markings on the card are concerned, they may be how?

A. Some in my handwriting and some in their own.

Q. And that, of course, is writing in answer to certain questions which appear in typewritten form on such cards?

A. Yes.

Q. Do the cards indicate the date the members signify their intention to become associated with your organization?

A. Yes.

Q. Do you have those cards with you?

A. Yes, sir.

Q. May I see them?

(Mr. Moscovitz examined the cards handed to him by Mr. Posner.)

MR. MOSCOVITZ:

I offer them.

(Mr. Halperin examined the cards.)

MR. MOSCOVITZ:

I offer them in evidence. I will have them marked for identification, if you will.

(The cards referred to were marked, B-11 to B-44 inclusive.)

BY MR. MOSCOVITZ:

Q. These cards which are marked for identification, 11 through 44 are membership cards of the organization?

A. Yes.

Q. And they indicate that you are the representative of these particular persons?

A. Yes, sir.

MR. MOSCOVITZ:

I will offer them.

MR. HALPERIN:

These cards are only secondary evidence of what counsel is trying to prove. What he is trying to show is the number of persons whom he claims went out on strike, or were laid off, and is laying the foundation for computing the number of persons that authorized Mr. Posner here

to act for them. I think that is the purpose for it. Now, these cards are self-serving. The best evidence undoubtedly are the girls. We don't know whether these girls worked here. We don't know who some of these people are.

MR. MOSCOVITZ:

The record Mr. Fainblatt introduced will correspond with that.

MR. HALPERIN:

The reason I am saying this is because of the fact I have gone through these cards and some of the names that appear here don't appear on the employer's list. We don't know who these people are, and when they are trying to use the names on these cards for the purpose of lying the foundation, I don't think it is fair to the employer. I hate to prolong the proceedings, but it is for his interest that we do so.

MR. MOSCOVITZ:

We offer these records which are the original Union records in this case. We offer them as a basis for comparison of the Union records with these which were introduced by Mr. Fainblatt so the record may show a basis of comparison. There may be some basis for comparison. We cannot at this time bring the persons who signed these cards.

TRIAL EXAMINER GATES:

I think it is customary to use records such as that for establishing to the extent that it does establish membership and representation. And they are admitted, recognizing of course, that there would have to be correspondence between the names on the cards and the names on the employer's book.

MR. GIROFSKY:

Is it binding on the employer?

TRIAL EXAMINER GATES:

Certainly.

MR. HALPERIN:

That means we will have to disprove them. They are offering them. They have got to prove them. They have got to prove these people worked there. If they were discharged or laid off.

MR. MOSCOVITZ:

Mr. Fainblatt's record will prove that point.

MR. HALPERIN:

I will take exception and let them go on.

TRIAL EXAMINER GATES:

They are admitted.

(The documents referred to were admitted to evidence and marked B-11 to B-44.)

MR. MOSCOVITZ:

We understand these are admitted in accordance with your ruling and the Board in consideration of these records will attach to them whatever weight it deems advisable under the circumstances.

TRIAL EXAMINER GATES:

Q. As far as you know, there are no cards in there of people who were not employed by the Somerset Manufacturing Company at about the time of the signing of the card, is that correct?

A. Yes.

Q. You know that only insofar as the signers of the cards have told you so?

A. I also know it from implication by other witnesses in the shop verifying that they were workers in the shop.

MR. HALPERIN:

May I have a chance during the recess to examine these cards? I will be responsible for them.

TRIAL EXAMINER GATES:

Do you have anything further at this point?

MR. MOSCOVITZ:

I would appreciate it very much if we could continue the cross-examination at this time and dispose of the matter.

MR. HALPERIN:

We will take each one by one.

MR. MOSCOVITZ:

I prefer that we continue the cross-examination.

Cross Examination

BY MR. HALPERIN:

Q. Mr. Posner, we will take the first one, Mary Petrone. When was the first time you met Mary Petrone?

A. On August 28th. Now Mary Thomas.

Q. Where was the place that you met her at?

A. Raritan, at the Harmony Hall.

Q. You, of course, never saw her working in the plant?

A. No, I did not.

BY MR. MOSCOVITZ:

Q. Did you ever see any of them?

A. No, I did not.

MR. GIROFSKY:

This is cross-examination.

MR. MOSCOVITZ:

We will stipulate that he never saw any.

BY MR. HALPERIN:

Q. All this information you have is hearsay?

A. Information she gave me personally when I accepted her card.

Q. Do you know when Mary Petrone stopped work?

A. I could not tell you off-hand. I am not informed at the present moment when she stopped working.

Q. Mayme Ross.

A. I know Mayme Ross, one of the workers of the shop.

Q. You did not see her working there?

A. I did not.

Q. You know from hearsay?

A. She told me and also from what other workers have told me.

Q. Where was that when you first met Mayme Ross?

A. I first met Mayme Ross at Harmony Hall in Raritan.

Q. What day?

A. I can't remember the date. The date that the card stipulates.

Q. Do you know what date Mary Petrone left the employ of the respondent?

A. I do not.

Q. Frances Cicero.

A. I know Frances Cicero.

Q. Do you know the day Frances Cicero left the employ of the respondent?

A. I do not.

Q. All the information that you know about her is what you have obtained by hearsay?

A. From herself and also from other workers.

MR. MOSCOVITZ:

I object to the use of the word hearsay. You ask the witness for a legal conclusion.

BY MR. HALPERIN:

Q. Did you ever see Frances Cicero working at the plant?

A. I did not.

Q. Did Frances Cicero herself tell you she was working there?

A. She did.

MR. MOSCOVITZ:

If I may interrupt, I am perfectly willing to stipulate all that. I am perfectly willing to stipulate in the first place that the signers of these cards gave Mr. Posner the information. In the second place, that Mr. Posner never saw any of these signers working at the plant. He acts in that regard on information and belief. We are willing to let the record speak for itself, and are willing to let Mr. Fainblatt's record speak for itself.

BY MR. HALPERIN:

Q. Do you know Teresa Barona?

A. I did.

Q. Do you know when Teresa Barona signed the card?

A. I cannot remember dates, my friend.

Q. You don't remember. I don't belong to the Union so I am not a friend.

A. I consider you a friend.

Q. Do you know when Teresa Barona left the employ?

A. I do not.

Q. Do you know Margaret Kopf?

A. I do not.

Q. Do you know when she signed her card?

A. I could not tell you.

Q. Do you know whether she is a member of the Union or not?

A. I don't know anybody by the name of Margaret Kopf.

Q. Do you know whether Margaret Kopf was ever given notice by you to attend a meeting?

A. I could not say. Probably the girls did speak to her, I don't know.

MR. HALPERIN:

I would like to put the stipulation on for you to save time, to the effect that—

MR. MOSCOVITZ:

If you will just agree to the stipulation I read to the record before.

(The stenographer read back the stipulation made by Mr. Moscovitz; Line 6, Page previous to this one.)

BY THE WITNESS:

A. All the information I have on these cards was given to me by the signers themselves, and a good deal of information furnished by some other workers who verified that they also belonged to the shop.

MR. HALPERIN:

Will he say, all the information contained in the cards referred to was given to me by the girls who signed them and I know nothing of my own knowledge as to the truth of the statements therein contained.

MR. MOSCOVITZ:

I can't accept that.

MR. HALPERIN:

He says he was not there.

MR. MOSCOVITZ:

That part I don't agree with. This must not be taken from the record that he has spoken with these people who signed. They have told him that they work there. Now he has not seen them working there. I think, let the facts speak. I don't want to draw any conclusions.

MR. HALPERIN:

All I want to say is, it is hearsay.

MR. MOSCOVITZ:

Hold on to the facts. If the true facts are there let somebody draw conclusions. I don't want any reinforcements drawn on anybody's position. We just want the facts.

MR. HALPERIN:

You are arguing about something that does not amount to anything.

MR. MOSCOVITZ:

If it doesn't amount to anything will you withdraw it?

MR. HALPERIN:

I will withdraw it. I have concluded my cross examination.

(Witness dismissed.)

MR. MOSCOVITZ:

At this time I would like to make a motion. I move at this time, Mr. Examiner, that the pleadings in this case be made to conform to the proof, in addition I move that the testimony of Miss Yemma be introduced by amendment, incorporated in the complaint, as part of the allegations contained therein. Specifically as to the allegations contained in Section 8, Subdivisions 1, 3, and 5.

MR. GIROFSKY:

I respectfully submit, Your Honor, we were served with the charges and prepared our case on the basis of the charges and allegations in the complaint. I respectfully submit, Your Honor, that Mr. Moscovitz is not amending his complaint. But making an addition to the complaint. It is not properly before you as an amendment.

TRIAL EXAMINER GATES:

What specifically are you referring to, Mr. Girofsky?

MR. GIROFSKY:

Specifically to the addition of the name Yemma to the list of girls in Paragraph 3 of the complaint. Is that the proposed amendment?

MR. MOSCOVITZ:

That is it, sir.

MR. GIROFSKY:

It is not properly an amendment. It is an additional charge with which we were not served and with which we had no opportunity to answer. In the way of answering pleadings. If Mr. Moscovitz's proof does not conform with the allegations in submitting evidence, he may file such supplementary complaint. We insist upon being served in accordance with the rules and provisions of the Act.

TRIAL EXAMINER GATES:

Did you file an answer, specifically referring?

MR. MOSCOVITZ:

Mr. Examiner, does Mr. Girofsky object to the motion to conform to proof? As well as

the motion to include Miss Yemma? You object to everything?

MR. GIROFSKY:

You have one motion?

MR. MOSCOVITZ:

It is in effect one motion.

MR. GIROFSKY:

I object to it.

MR. MOSCOVITZ:

I stand on the motion to conform to proof in this case, Mr. Examiner. It is quite proper in these proceedings and in accordance with practice. So far as Miss Yemma is concerned, I submit the same statement in support of my motion regarding her specifically. I may say further that her testimony was given, joined in by cross-examination by the respondent, who is not taken by any surprise obviously, given full opportunity to cross examine.

MR. GIROFSKY:

Now the proposed change that Mr. Moscovitz desires to make is really an additional charge. The rules promulgated by this Board require that such a charge be in writing, filed with the Board, and to be signed under oath. If Miss Yemma wants to make a charge or Mr. Posner wants to make a charge, and I submit let them serve us with the charge after it is properly filed. It is not an amendment in the true sense of the definition of the term amendment.

MR. MOSCOVITZ:

If there were anything strange about the motion that I am making, if it was not made day after day in all proceedings, regardless of whether they be administrative or not, I might

give some pause and thought to Mr. Girofsky's arguments. However, under the statute under which we are operating, I submit the motion should be granted without further argument.

TRIAL EXAMINER GATES:

What about the position of Mr. Girofsky in answer to Yemma?

MR. MOSCOVITZ:

I say that should also be granted in the motion to conform. But in addition I say that despite that fact, Mr. Girofsky, as counsel for the respondent has joined in the examination of this witness without raising any objection.

TRIAL EXAMINER GATES:

Is it your contention that no charge is necessary in order to have her name added to the complaint?

MR. MOSCOVITZ:

Exactly. Those are new facts which developed during this inquiry, joined in by respondent, without objection or exception, without voicing any statement of surprise. Now, in view of the character of the proceedings, especially, the motion should be granted or the Trial Examiner certainly should not hastily pass upon it, and should take it under consideration.

TRIAL EXAMINER GATES:

Mr. Girofsky, is this any substantial prejudice to your case?

MR. GIROFSKY:

I have not had an opportunity to file a proper pleading with the addition of a new person listed as one discharged. It is really an additional charge, Mr. Examiner.

TRIAL EXAMINER GATES:

How much time would you require to file an amended answer, or an amendment to the answer as to that person?

MR. GIROFSKY:

Are you permitting it?

TRIAL EXAMINER GATES:

I am asking how much time is required.

MR. GIROFSKY:

We can't file an amended answer until they file a supplemental complaint.

TRIAL EXAMINER GATES:

I think it is customary to move to amend in this manner. The only thing I want to do, I am disposed to grant the motion, but I want to give you all possible protection in the matter.

MR. GIROFSKY:

The rule it seems under Article II with respect to the charge, Section 2 or Section 3, such charge shall be in writing, the original being signed and sworn to before a Notary Public or any agent of the Board authorized to administer oath or acknowledge them. Three additional copies of such charge shall be filed. Blank form for making the charge will be supplied by the Regional Director upon request.

TRIAL EXAMINER GATES:

We are familiar with the rules.

MR. GIROFSKY:

I would like to have it in the record to show the rules are not being complied with.

MR. MOSCOVITZ:

The insertion of Miss Venma's name does not change the character of the charge. The charge stands as it is. We are simply adding a

name to it. The question of whether or not the motion should be granted or denied, it seems to me is a question of due process.

MR. GIROFSKY:

We are not getting due process here.

MR. MOSCOVITZ:

I must state for the record, in view of the fact that I pay no attention to that slighting remark by counsel for the respondent since it is not in accordance with the facts and circumstances of this proceeding, that it be for the Trial Examiner to determine whether or not there has been propriety during these proceedings. I must say, further, in my opinion as a matter of due process, the respondent has been faced with the witness, he participated in examination without objection or exception.

TRIAL EXAMINER GATES:

I will grant the motion. Unless Mr. Girofsky has some specific request to make which is reasonable as a condition to granting the motion, as to filing amended answer here.

MR. GIROFSKY:

I submit then, Your Honor, at this time that you grant a stay of the proceedings until I have had an opportunity to properly file an answer with the Board and properly prepare a defense, since there is an entirely new charge.

TRIAL EXAMINER GATES:

It is not a new charge. I see nothing of surprise in it. We will have an hour's recess.

(Thereupon the hearing adjourned at 12:30 o'clock.)

After Recess

(The hearing reconvened at 1:30 o'clock.)

MR. GIROFSKY:

If the Court please, I understand that Mr. Moscovitz moved to amend his complaint to conform with the proof. And now I wish to amend the answer to the extent that I wish the allegations in the answer pertaining to the girls originally named in the complaint shall apply also to the amendment submitted and proposed and adopted by Mr. Moscovitz.

MR. MOSCOVITZ:

No objection.

TRIAL EXAMINER GATES:

That is, as I understand it, you wish to have your answer apply also to Miss Yemma?

MR. MOSCOVITZ:

Have the answer conform to the new pleading. No objection.

MR. GIROFSKY:

At this time I wish to file with the court in pursuance to the requirements under the rules a motion; three copies have been served upon or delivered and filed with the Board. That is right, Mr. Moscovitz?

MR. MOSCOVITZ:

Correct.

MR. GIROFSKY:

Asking you as the examiner and judge in this cause to dismiss the complaint herein filed on the grounds enumerated in the motion. I don't believe it is necessary for me to recite or read these various grounds for dismissal since the motion in written form goes as part of the record.

MR. GIROFSKY:

I make application at this time to dismiss on the grounds cited in the written motion.

TRIAL EXAMINER GATES:

The motion is denied.

MR. GIROFSKY:

I take exception. In view of the fact the Government or the National Labor Board, has called Mr. Fainblatt, one of the respondents, and in view of the proof and evidence rather, thus far submitted, respondent will rest without any further hearing.

TRIAL EXAMINER GATES:

Before this hearing is concluded I wish to state for the record that the National Labor Relations Board has taken jurisdiction of this case away from the Second Region which instituted the proceeding, in the manner customary and in accordance with the rules and regulations of the Board. The parties have five days in which to petition the Board that they wish to argue the matter orally before the Board, and ten days in which to file briefs if they care to file briefs. Otherwise the record will be the basis for the decision by the Board as it now stands. Unless the Board should conclude that it is desirable to re-open the hearing in order to obtain additional evidence.

If there is nothing further from counsel I will now adjourn this hearing upon further call of the National Labor Relations Board.

(The Hearing, thereupon adjourned at one-forty-five, P. M.)

**ORDER DIRECTING TRIAL EXAMINER TO
PREPARE AND FILE AN INTERMEDIATE
REPORT**

A hearing having been duly held in this proceeding before Robert M. Gates, the duly appointed Trial Examiner, and the proceeding having been transferred to and continued before the Board in accordance with Section 35 of Article II of National Labor Relations Board Rules and Regulations—Series 1,

It is hereby directed, in accordance with Section 36(a) of Article II of said Rules and Regulations, that the Trial Examiner, Robert M. Gates, prepare and file his intermediate report as provided in section 39 of said Rules and Regulations, except that such report shall be filed with the Board.

By direction of the Board:

BENEDICT WOLF.

Secretary.

(Seal)

INTERMEDIATE REPORT

Upon charge duly made, and acting pursuant to authority granted in Section 10 (b) of the National Labor Relations Act, approved July 5, 1935, Elinore Morehouse Herrick, agent of the National Labor Relations Board, acting pursuant to its Rules and Regulations, Series 1, Article IV, Section 1, issued its complaint dated January 28th, 1936, against Benjamin Fainblatt, also known as Benjamin Feinblatt, and Margorie Fainblatt, also known as Margaret Fainblatt, individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, the respondent herein. The complaint and notice of hearing thereon were duly served upon respondents on January 29th, 1936, in accordance with said Rules and Regulations, Series 1, Article V, Section 1. The complaint was amended by motion at the hearing.

The complaint as amended alleged: That the respondents since August 7, 1934, have been doing business individually under the firm names Somerville Manufacturing Company and Somerset Manufacturing Company, in Somerville, New Jersey; and that in the course and conduct of their business respondents have purchased substantially all raw materials used in manufacturing operations at Somerville, N. J., in states other than New Jersey, and have sold a substantial amount of the goods manufactured in Somerville, N. J., to purchasers outside the state of New Jersey, which constitutes a continuous flow of commerce among the several states. That respondents discharged eight girls during the period

from the middle of August to the middle of September, because the girls had joined Local No. 149, International Ladies' Garment Workers' Union, constituting a violation of the National Labor Relations Act, (hereinafter called the Act) Section 8, subdivisions 1 and 3. That a majority of the production employees of respondent had designated the International Ladies' Garment Workers' Union, Local No. 149, by Harry A. Posner, its manager, as their representative for collective bargaining with respondent, on August 28th, 1935; and that having been selected by a majority, Local 149 was thereafter the sole representative of respondents' employees for the purpose of collective bargaining, by virtue of the National Labor Relations Act, Section 9(a). That on or about September 13, 1935, Mr. Posner requested respondents to bargain collectively in respect to conditions of employment, but that respondents refused and as a result the union called a strike. That a majority of respondents' employees went on strike, that Posner has continued to represent a majority of the employees, but that respondents continue their refusal to bargain with him as the sole representative of the employees, in violation of Section 8, subdivisions 1 and 5 of the Act. And that these violations of the Act, constitute unfair labor practices affecting commerce.

Thereafter respondents filed their answer. The answer was amended by motion at the hearing to conform to the amended complaint. The answer as amended alleged: That the respondents are in business in Somerville, N. J., as alleged in the complaint, but they deny that they are engaged "in the sale and distribution of womens' sportswear". That respondents have no knowledge or information sur-

ficient to form a belief as to (1) an appropriate unit in respondents' plant for the purpose of collective bargaining; (2) the selection of the International Ladies' Garment Workers' Union, Local No. 149, by Harry A. Posner, its manager, as the representatives of a majority of respondents' employees; (3) the continued refusal to recognize and deal with Posner after the strike; and (4) the acts of respondents, alleged in the complaint, constituting unfair labor practices affecting commerce. The answer denied all other allegations of the complaint, and contended that the Act is unconstitutional and not applicable to the business of the respondents.

Pursuant to the notice of hearing, the undersigned, as Trial Examiner of the National Labor Relations Board, designated to conduct hearings in this case, conducted a hearing on February 17, 18 and 19, 1936 at Somerville, N. J. The respondents appeared specially by Leon Girofsky, T. Girard Wharton, and Joseph Halpern, and participated in the hearing. The International Ladies' Garment Workers' Union, Local No. 149, appeared by Alexander Feller. Full opportunity to be heard, to cross examine witnesses, to produce evidence bearing upon the issues, and to file briefs, was afforded to the parties. Respondents did not call any witnesses or produce any evidence in support of the answer.

The National Labor Relations Board ordered the proceedings transferred to and continued before the Board in accordance with Section 35 of Article II of the Rules and Regulations, Series 1, and directed that the undersigned as Trial Examiner, prepare an intermediate report and file said intermediate report with the Board, in accordance with the Rules and Regulations, Series 1, Article II, Section 36(a).

At the beginning of the hearing and at the conclusion of the case for the Board, counsel for respondents moved to dismiss the complaint on the grounds that the National Labor Relations Act is unconstitutional, and if constitutional the Act is not applicable to respondents' business. Both motions to dismiss were denied. At the conclusion of the case for the Board, counsel for the Board moved to amend the complaint by including the name of Theresa Yemma with the others alleged to have been discharged by respondents, and by having the pleadings conform to proof. The motion was granted. Counsel for respondents moved to have the answer conform to the amended complaint. The motion was granted.

Upon the record as thus made, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence received at the hearing, the undersigned makes, in addition to the above, the following specific findings of fact:

FINDINGS OF FACT

I.

THE SOMERVILLE MANUFACTURING CO. AND THE SOMERSET MANUFACTURING CO.

1. The Somerville Manufacturing Company and the Somerset Manufacturing Company, located in Somerville, New Jersey, were established on or about August 15, 1934. The complaint is against Benjamin Fainblatt, also known as Benjamin Feinblatt, and Margorie Fainblatt, also known as Margaret Fainblatt. It appears that the correct names

of these individuals are Benjamin Fainblatt and Margorie Fainblatt, respectively, and these names will be used hereafter in this report. Benjamin Fainblatt established the two companies using as capital money loaned to him by the Lee Sportswear Co. upon a chattel mortgage on the machinery in the plant. Mr. Fainblatt testified that he is the sole owner of the two companies, and that he has no financial interest in the Lee Sportswear Co. He also stated that the two companies were formed as a matter of convenience, for reasons not material here, but that he had discontinued using the name Somerville Manufacturing Co. and made the last shipment under that name in February 1935. Since that time he has used only the name Somerset Manufacturing Company. The Somerville, N. J., plant is the only plant of respondents. The company is not incorporated.

2. Benjamin Fainblatt is an exclusive contractor for the Lee Sportswear Co., 520 Eighth Avenue, New York, N. Y., and is engaged in the manufacturing of ladies sports garments, such as ski suits and skirts for winter wear, and shorts, slacks, blouses and skirts for summer wear, known in the trade as snow wear and beach wear. The Lee Sportswear Co. is a partnership composed of Leo, Irving and Margorie Fainblatt, children of Benjamin Fainblatt. Benjamin Fainblatt left the employ of the Lee Sportswear Co. to establish the business in Somerville. Although Benjamin Fainblatt states he is the sole owner of the Somerset Company, his daughter, Margorie Fainblatt, does give him assistance in the conduct of the business, in such matters as checking the payroll each week, and she is paid for this serv-

ice. She also occasionally gives instruction to Somerset employees in regard to making garments. Margorie Fainblatt is joined with her father as the registered owners of the Somerset Company, but Benjamin Fainblatt contends that she does not have any interest in the Somerset Manufacturing Co. and that he merely permitted her to register as a part owner, to avoid trouble with the code authorities.

3. The evidence does not disclose that the Somerset Manufacturing Company is owned completely or in part by the Lee Sportswear Co., but it does appear that the separate identities are largely fictitious and that in reality, if not legally, the two operations constitute a family business. The answer of respondents does not deny the allegation of the Board in respect to the connection of Margorie Fainblatt with the Somerset Manufacturing Company. In view of this and the admission that she is registered with the state or county officials as a part owner, the complaint should not be dismissed as to Margorie Fainblatt.

II.

THE DISCHARGES

4. On August 14th, 1935, after considerable discussion among the employees, three employees of the Somerset Manufacturing Company and Benjamin Fainblatt went to Plainfield, N. J., and there talked to Harry A. Posner, manager of Local No. 149, International Ladies' Garment Workers' Union. The three girls were Mary Morano, Ethel Rice and Anna Santoro. They asked Posner to organize the employees in respondents' plant. Posner agreed to have a meeting with the girls in the plant if there

was enough interest. On August 19th the three girls reported to him and arranged for a meeting to be held in Raritan, N. J., near Somerville, on August 21st. This meeting was held, during the course of which a number of respondents' employees applied for membership in Local No. 149. A second meeting was held on August 28th, and additional applications were received.

5. Fainblatt held two meetings with his employees, the first on the afternoon of August 21st, prior to the Union meeting, and the second on August 28th or 29th. Although these two meetings will be discussed more fully later in this report, they are mentioned now as throwing light upon the discharges alleged in the complaint. At the first meeting, Mr. Hess, Mayor of Somerville, and one other citizen spoke to the girls. At the second meeting, Mr. Adams, Sheriff of Somerset County, spoke. All three of the speakers advised the girls against joining the Union.

6. At a meeting on September 17th, following a report from Posner that Mr. Fainblatt refused to recognize and deal with him as a representative of the employees, the girls who had applied for membership in Local No. 149, as employees of the Somerset Manufacturing Company, voted to strike at ten o'clock on the following morning. On September 18th, 1935, pursuant to the strike call, between twenty-two and twenty-eight of the girls walked out. They were still on strike at the date of the hearing.

7. Elizabeth Schoka was employed as an operator by respondents in August, 1934. She was laid off

about Christmas of that year and recalled to work sometime later, in 1935. At the beginning of her employment she was rated as a learner, but subsequently her rating was changed to that of an operator and she was paid accordingly. Following the invalidation of N. R. A. codes, her rate was cut, but she continued to work about forty hours per week. She was paid on piece rates. During the summer months, following the cut in piece rates, she received between nine and twelve dollars a week.

8. On August 14th, 1935, Elizabeth Schoka met the three girls who had called upon Posner, after they had returned from Plainfield. She signed an application card that evening, applying for membership in Local No. 149. According to her testimony she was discharged the following day. Fainblatt testified that the last day Elizabeth Schoka worked was August 21st. The precise date is not important, and there was no testimony offered tending to contradict or disprove her account of what took place, irrespective of the date. About eleven o'clock in the morning, Elizabeth Schoka asked for more work. Mrs. Ruth Evans, the forelady, said "Mr. Ruby will attend to you." Mr. Ruby is the foreman of the shop. He told Elizabeth Schoka, "You are causing too much trouble. Get your work marked and go home." Mrs. Schoka followed his instructions. About a week prior to this she was taken into Fainblatt's office. Fainblatt asked her, "Who approached you to sign the union—Frank or his wife?" She replied "Nobody", and was permitted to leave. This would tend to indicate that Mr. Fainblatt's testimony in fixing the date of her discharge as August 21st is more accurate.

9. About August 22, 1935, Elizabeth Schoka obtained employment at Stars Dress Shop in Plainfield, N. J., for a period of four or five weeks, receiving \$17 a week. She stated that she came back for the strike, and that she was laid off because work was slack: The complaint uses the name Elizabeth Schoka.

10. Ethel Rice, a floor girl, was employed by the Somerset Manufacturing Co., in January, 1935. Following the invalidation of N. R. A. codes her wages were cut from 32 1/2¢ an hour to 25¢ an hour, and the hours of work became irregular, so that she did not always work a full time week of forty hours. Prior to August 14th, 1935 a number of the employees discussed joining a union, and as a result, Ethel Rice, Mary Morano and Anna Santera went to Plainfield to see Mr. Posner for the purpose of obtaining his assistance in organizing the employees. While there all three girls signed cards applying for membership in Local No. 149. The first meeting of the employees was to be held early in the evening of August 21st. On the afternoon of the same day Mayor Hess and Mr. Hawley spoke to the girls who were operators. The floor girls working on the floor below were not asked to attend the meeting. Due to the fact that there was a considerable amount of work to do, Ethel Rice and Lorraine Heitz worked overtime that afternoon during the time that the meeting was in progress. After the meeting they asked Mr. Fainblatt as to what time they should come in the following morning. He told them "I have no more work for you two girls—you can go to the union for work." Between the time of the meeting with Posner and the foregoing conversation with

Mr. Fainblatt, Ethel Rice had been active in interesting the employees in joining the union. Mr Fainblatt testified that Ethel Rice last worked for him on August 16th, but in view of all the other uncontradicted testimony of Ethel Rice and Lorraine Heitz, the date of the discharge must be taken to have been August 21st.

11. Ethel Rice and Lorraine Heitz went to the plant the next day to get their pay. As they approached the plant, the other floor girls waved at them from the windows on the third floor. The floor girls usually worked on the first floor of the plant. Lorraine Heitz asked Mr. Fainblatt whether he had any more work for herself and Ethel Rice. He replied, "I told you girls once before I have no more work for you." He then opened the door to the room where the floor girls usually worked and added, "You see, I have no more work for you—none of the girls are here." The following week when the two girls went back for the rest of their pay, they were paid by Miss Lee, as Marjorie Fainblatt is known to the employees of the plant.

12. Lorraine Heitz, a floor girl, started with the Somerset Manufacturing Co. in April, 1935. She applied for membership in Local No. 149 on August 21st, 1935, at the first meeting of the employees with Mr. Posner. Following the invalidation of N. R. A., her rate of pay was cut from 24¢ an hour to 21¢ an hour and then to 18¢ an hour. Her hours were irregular so that she did not regularly work a full time week of forty hours. About a week prior to the meeting on August 21st, Mr. Ruby, the foreman, asked Mrs. Heitz whether she had heard any-

thing about the union, whether she was interested in it, and several other questions about the union. She told him that she had no information for him. Her testimony as to the conversations with Mr. Fainblatt corresponds with the testimony given by Ethel Rice. Following her discharge she attended the union meeting on August 21st and there signed an application card which is dated August 28th. Mrs. Heitz states that the reason for this difference in dates is that the application card was only partially filled out during the first meeting and was completed at the second meeting a week later. She has not worked elsewhere since the date of her discharge, August 21st, 1935.

13. Angelina Matteis is an operator. She worked for the Somerset Manufacturing Co. for about one year prior to August 21st, 1935. During the last several weeks of her employment her weekly income ranged between \$8 and \$12, based upon piece rates. On the afternoon of August 21st she attended the meeting at which Mayor Hess and Mr. Hawley spoke, and on the way home from the plant she asked several girls whether they were going to the union meeting that evening. She attended the meeting and there signed an application card for membership in Local No. 149. The next morning when she came to the plant, she asked for work, but both Mrs. Evans and Mr. Ruby told her to wait. After waiting about half an hour Mr. Ruby called her aside and told her, "I am sorry, you are causing too much trouble. I have no more work for you." She asked him whether he could prove it and he said "No". She replied, "It is all right with me," had her work marked and then went home. About one

month prior to the hearing she was employed for one week at a plant in Plainfield for which she received between \$14 and \$15.

14. Mary Gecik, an operator, started working for the Somerset Manufacturing Co. in March, 1935. She was paid piece rates, and following the invalidation of N. R. A. codes, she received about \$7 of \$8 a week. She did not always work a regular full time week of forty hours. At the meeting of August 21st, she signed an application card, applying for membership in Local No. 149. She states that on August 29th, Ruby, the foreman, told her, "I have not any more work for you. You are causing too much trouble. If you want work go to the union. The union will give you work." She then left the plant. Mr. Fainblatt testified that August 21st was the last day that Mary Gecik worked for him, whereas she states that August 28th was the last day she worked, and this seems more consistent with the rest of her testimony, none of which is otherwise contradicted by respondents.

15. Theresa Yemma started working for the Somerset Manufacturing Co. in April, 1935, and was employed both as an operator and a floor girl. On August 29th, 1935 she went for her pay. Ruby, the foreman, told her that he did not have any more work for her, as she was causing too much trouble. She then left the plant. For several days prior to this Ruby had not given her any work at the same time that others were given work on which Miss Yemma had experience. Instead he told her to wait. Having no work during this period she generally left before the end of the day. Mr. Fainblatt's testimony that the last day Miss Yemma worked was

August 21st is not altogether inconsistent with her testimony.

From about the middle of September until two or three days after Christmas Miss Yemma worked at Treiber's plant on products similar to the products of the Somerset Company, where her pay averaged about \$13 a week. She also worked on Saturdays during the month of October, November and December, in a department store in Somerville where she received 21c an hour, and generally worked a nine hour day although some days she worked longer.

16. Fay Katz started working for the company in December, 1934, as an operator. Her pay was computed on the basis of piece rates, which were cut following the invalidation of the N. R. A. codes. On ski pants the rate was cut from 98c a dozen to 63c a dozen. During the last few weeks of her employment she did not work a full time week of forty hours regularly. When she did work forty hours her pay amounted to \$7 or \$8 a week. Mrs. Evans, the forelady, spoke to Miss Katz about the union on August 21st. On the same day Miss Katz attended the meeting of the operators on the second floor. Mayor Hess and Mr. Hawley spoke at this meeting. On August 28th a similar meeting was held at which Sheriff Adams spoke. All three of the speakers advised the girls against joining the union. Fay Katz applied for membership in the union at the first meeting of the girls on August 21st. The information on her card was filled in by Mr. Posner in her presence from information she gave him. She signed the card. The testimony is conflicting as to the last day Miss Katz worked. She stated that she last worked on Monday, September 16th, and again that

her last day was September 18th, while Fainblatt testified that the last day she worked for him was September 11th. However, his statement was not supported by further evidence. It is probable that fixing the date as September 18th was an error, in view of two other statements indicating that the day of the week was Monday. September 18th was on Wednesday, and was the day of the strike, the time of the walk-out being ten in the forenoon. She further testified that she didn't leave the plant on the day of her discharge until noon. While the evidence is not conclusive, it does not warrant a finding that the date was other than September 16th, especially as this does not prejudice respondents.

17. On Monday, September 10th, 1935, Fay Katz finished working on ski pants about eleven in the forenoon. Ruby, the foreman, told her to wait. Although she had experience in working on skirts he did not give her any work, but he did give work on skirts to girls who had not worked on them before. After waiting until twelve o'clock she was told by Ruby, "I haven't any work for you, come in tomorrow morning and I will start you on skirts." The following day when she returned to the plant Mr. Fainblatt would not let her in but detained her in the office. While there he told her, "I have no work for you." Miss Katz said to him, "You gave other girls work," and he replied "I don't owe you anything. If you want work you can go to the union." Miss Katz then left. Since that time she worked four and one half days in Plainfield for which she received "something over fifteen" dollars.

18. Anna Santoro started working for respondents when the plant was opened in August, 1934.

She worked as an operator and was paid on a basis of piece rates, earning \$8 or \$9 a week during the weeks prior to being laid off, and after the cuts in piece rates which took place following the invalidation of N. R. A. codes. On August 14th with Mary Morano and Ethel Rice, Mrs. Santoro went to see Mr. Posner in Plainfield. At this conference she signed a card applying for membership in Local No. 149. On September 18th Mrs. Evans, the forelady, said to Mrs. Santoro, "Annie, I heard you was the one that started all this trouble here. You went to Mr. Posner." Following this conversation Mrs. Santoro heard the girl next to her tell Mrs. Evans that Mrs. Santoro was going to blow the whistle as a signal for the girls to leave their work and walk out on strike. Mrs. Evans then talked to Ruby, the foreman, and came over to Mrs. Santoro, telling her, "No more work for you. You are the one that is going to blow the whistle." This occurred about fifteen minutes before the girls walked out. Mrs. Santoro then left, prior to the strike.

19. Respondents' answer alleges "that said employees were dismissed momentarily on the dates alleged in the Bill of Complaint until such time as respondents were in a position to furnish said employees with further work; that said employees have not, at any time, applied or returned to the respondents for employment." Mr. Fainblatt testified that the girls were temporarily laid off for lack of work. No evidence was submitted by respondents tending to prove their contention, nor is this position substantiated by the record of shipments from the plant during September and October. The testimony of Ethel Rice, Lorraine Heitz, Fay Katz and Theresa

Yemma tends to show that there was plenty of work. In laying off Ethel Rice and Lorraine Heitz, the only instance when Mr. Fainblatt or his supervisory employees appeared to give the employees this reason for the lay-off, he resorted to subterfuge to convince them that work was slack, and furthermore told them to go to the union for work. No weight can be attached to respondents' contention that these girls were temporarily laid off for lack of work.

20. Respondents also state that none of the girls applied for reinstatement. This is correct only as to some of the girls. The proof is not altogether conclusive that their representative, Mr. Posner, asked for their reinstatement in connection with his attempts to negotiate an agreement with respondents. Mr. Fainblatt's denial that Mr. Posner included reinstatement of the discharged employees as one of the terms in his proposal for settlement is evasive and almost convincing that the opposite is true. Posner denied that it was not included. However, the lay off in each instance was so final, reinstatement could not be expected even if applied for. Fainblatt testified that he is and has been willing to take back all of the girls as "individuals" if they come back peacefully, and if he has enough work. Although Fainblatt states that they may belong to any organization they see fit, by his use of the word "individuals" he obviously means individuals who have dropped union membership or who will not insist that the union represent them in collective bargaining in regard to conditions of employment. Such a position is untenable and it is difficult to believe that it was advanced in good faith when con-

sideration is given to the attempts of two of the girls, Ethel Rice and Lorraine Heitz, to be put back to work. That dropping union membership was a condition of reinstatement not only for the girls laid off but also for the strikers is further substantiated in the questions asked by respondents' counsel in cross-examining Mr. Posner. Respondents cannot escape responsibility for their own acts by attempting to throw further responsibility upon employees left to shift for themselves. In order to sustain a case before this Board, under all of the circumstances, it was not necessary for the girls laid off to make additional efforts to obtain reinstatement.

21. There is no contention that any of the girls laid off were inefficient, inexperienced, or had "caused trouble". The testimony of a number of the girls indicates that they were exceptionally good workers.

22. None of the employees, the subjects of the foregoing findings, are dues paying members in Local No. 149, but all have applied for membership. They are considered members according to the custom of the organization and are receiving strike benefits from the International Ladies' Garment Workers' Union.

23. From the testimony outlined above, it is apparent that there was a concerted drive on the part of respondents to break up the organization activities among the employees. When several of the girls were laid off they were told to go to the union for work. At the meetings of employees called by Mr. Fainblatt, public officials advised the girls not to join the union. Fainblatt, Ruby, and Mrs. Evans

questioned several of the employees about the union and kept themselves informed by reports from, or questions to, other employees. Many of the acts complained of occurred immediately before or immediately after important union events. On the witness stand Mr. Fainblatt exhibited extreme antipathy toward unions and union activities and objectives. He testified that no one can hire and fire without his approval. From all of his acts at the time and since, there can be no question as to his approving the acts of his supervisory employees, Ruby and Mrs. Evans, in laying off the employees here in question.

24. Lorraine Heitz was laid off before she applied for membership in Local No. 149. However, within the space of a few hours she did apply for membership and also for reinstatement. The attitude of Fainblatt in laying her off cannot be mistaken. She was laid off for having union sympathies and to discourage membership in Local No. 149. It is merely accidental, insofar as respondents are concerned, that she had not applied for membership at the actual moment of her lay off.

25. Said Elizabeth Schoka was discharged by Mr. Ruby, an agent of respondent, on August 21, 1935, said Ethel Rice and Lorraine Heitz were discharged by respondent Benjamin Fainblatt on August 21, 1935, said Angelina Matteis was discharged by Mr. Ruby on August 22, 1935, said Mary Gegik and Theresa Yemma were discharged by Mr. Ruby on August 29, 1935, said Fay Katz was discharged by Mr. Ruby on September 16, 1935, and said Anna Santoro was discharged by Ruth Evans, an agent of respondent, on September 18, 1935, and all of

them have since been refused employment by respondents, for the reason that said Elizabeth Schoka, Ethel Rice, Lorraine Heitz, Angelina Matteis, Mary Gecik, Theresa Yemma, Fay Katz, and Anna Santoro joined and assisted a labor organization known as International Ladies' Garment Workers' Union, Local 149, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

26. By said discharge and refusal to employ said Elizabeth Schoka, Ethel Rice, Lorraine Heitz, Angelina Matteis, Mary Gecik, Theresa Yemma, Fay Katz, and Anna Santoro, respondents have interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

27. By said discharge and refusal to employ said Elizabeth Schoka, Ethel Rice, Lorraine Heitz, Angelina Matteis, Mary Gecik, Theresa Yemma, Fay Katz, and Anna Santoro, respondents have discouraged membership in the labor organization known as International Ladies' Garment Workers' Union, Local No. 149.

III.

THE ATTEMPTS TO BARGAIN COLLECTIVELY

28. At the first union meeting, of the employees at Fainblatt's plant, on August 21, 1935, about twenty-five employees were there. All of them signed cards applying for membership in Local No. 149. The next meeting was held one week later, on August 28th, 1935. About ten additional employees were there who also signed cards. Additional cards

must have been turned in at about this time also, for Mr. Posner testified that the total membership in the Somerset plant was forty-three. During the hearing forty-two application cards were admitted in evidence. With the exception of two cards dated August 30, 1935, and one card dated September 4th, 1935, which was later withdrawn, all of the cards were dated on or before August 28th, 1935. Three were dated August 14, nineteen were dated August 21, and seventeen were dated August 28th, 1935. The testimony is conflicting as to whether the employees authorized the International Ladies' Garment Workers' Union, Local No. 149, and its manager Harry A. Posner, to represent them at the first or second of these meetings. There is no reason to doubt that the authorization occurred at one or the other or both of these meetings. Two more employees applied for membership on August 30th, and one more on September 4th. By applying for membership these employees must be taken to have ratified the action of the group. While the testimony and evidence as to the method of handling union business, indicates a disregard for some of the formalities, there is sufficient testimony and evidence to indicate that Posner was the choice of the group who applied for membership, in the absence of any showing to the contrary. Arriving at this conclusion is easier in view of the efforts of the girls to have Mr. Posner come to Somerville for the purpose of organizing the workers, and the deeply felt insistence of some of the girls, while on the witness stand, that the group wanted and needed him to represent them.

29. At both of the union meetings the girls pres-

ent told Posner of the conditions in respondents' plant, and at the August 28th meeting he was requested and authorized to present a proposed agreement to respondents for the purpose of improving the conditions of the employees in the plant. Pursuant to these instructions, Mrs. Posner met and conferred with Mr. Fainblatt on or about August 30th, 1935. Mr. Posner testified as to this meeting as follows: "I told him (Mr. Fainblatt) that I had several meetings with his workers and that we had discussed the conditions in the shop and that they had delegated me to present Mr. Fainblatt with demands improving their conditions, which I did, and Mr. Fainblatt listened to me very carefully and told me that he would take these demands into consideration, and he would let me know in a few days". Mr. Posner left a proposed agreement with Mr. Fainblatt. Not having heard from Mr. Fainblatt, Mr. Posner called him on the telephone on September 6th, 1935. He asked whether Mr. Fainblatt had any answer for him. Mr. Fainblatt told Mr. Posner that he would not recognize Posner as the representative of Somerset employees, and that he would have no dealings with Posner or the union. Mr. Posner reported this to respondents' employees who had selected him as their representative and on September 17th, 1935, the group voted to strike at ten o'clock on the following day. On September 18th, the strike was called as scheduled. Mr. Posner made no further attempts to get in touch with Mr. Fainblatt. Mr. Fainblatt testified at the hearing in this proceeding that he would not have an outsider running his business. This was in answer to the question as to whether or not he did or would deal with the union.

About ten days or two weeks later Mr. Posner called on Mr. Girofsky, respondents' attorney and representative. Mr. Girofsky told Mr. Posner, "that Mr. Fainblatt would not talk union or recognize anybody that had any connection with the union". No adjustment of the strike or the cause of the strike was reached.

At some later date a conference was held at which Mr. Fainblatt, Mr. Girofsky and Mr. Posner were present. Mr. Posner again submitted a proposed agreement, and informed Mr. Fainblatt that the union terms for settlement were a minimum wage of \$16 for a 37½ hour week, and a union shop.

About two weeks before the hearing Commissioner Moffett of the U. S. Department of Labor; Conciliation Service, suggested to Mr. Posner a settlement whereby seven girls would be taken back, the remaining girls to be taken back when work was available, and under non-union conditions. Posner refused to settle on these terms. It is a fair inference from this line of testimony that present conditions in the plant are slightly better than before the strike.

30. The tailoring department, which was the only department affected by the strike, in respondents' plant at Somerville, excluding supervisory employees, constitutes an appropriate unit for the purpose of collective bargaining. There is one office girl, working for respondents, and two supervisory employees—Mr. Ruby, the foreman, and Mrs. Ruth Evans, the forelady. These employees should be excluded from the bargaining unit. All of the operators and floor girls should be included in the unit. Although they work directly upon production and

their names are kept upon the pay-roll, the two cutters Charlie Grill and Joe—as he is designated on respondents' payroll—and Mrs. Smith, the finisher, do not work regularly. These employees should be excluded from the unit. In addition the cutters are engaged in work entirely different from that of the operators and floor girls, and are in a separate department, known as the cutting department. The record does not clearly indicate the complete duties of the four "general men", Jimmy, Al, Eddy, and Tony. However, from Mr. Fainblatt's testimony it appears that although some of the general men may occasionally work on garments, their regular duties more frequently include cleaning the floor, "carrying from one to another", fixing the belts on machines, shipping the finished garments, cleaning the machines, and otherwise assisting Mr. Fainblatt in whatever there is to do. Their principal duties are not related to production, and hence they should be excluded from the unit.

31. Respondents' payrolls for the weeks ending August 16th, 23d, and 30th, and September 7th, 14th, and 21st, 1935, were introduced in evidence. A number of employees were listed on the payrolls who did not work in a particular week. Mr. Fainblatt also testified that there were a number of girls laid off temporarily because of lack of work. The names of these employees do not appear on the payrolls. No new names appeared on the payrolls during this six-week period replacing the eight girls involved in this proceeding. In view of the authorization given to Mr. Posner on August 28th, the most appropriate period for computing the number of employees in the unit is for the week ending August

30th. To avoid uncertainties as to the status of laid off employees, it is necessary that the computation should include only those employees who actually worked during that week. During the week ending August 30th, 1935, the names of sixty-five employees whose occupations entitle them to be included in the unit, appeared on the payroll. Of this number, according to the symbols and figures on the payroll, only fifty worked at any time during the week. To this number must be added the six girls found to have been discharged in violation of the Act prior to this date. It is well established in matters of this nature, that an improper discharge should not operate to prevent an employee from joining with fellow employees in the selection of representatives for collective bargaining. Accordingly the total number of employees in the unit is fifty-seven.

32. Included in the forty-two application cards submitted as evidence of the extent of representation are seven cards of employees who were laid off between July 24th and August 20th, 1935. No allegation or showing was made that these lay offs were improper or that the statements of Mr. Fainblatt to the effect that the lay offs were because of lack of work, were incorrect. These seven employees cannot be counted in computing the number of respondents' employees who designated Mr. Posner as their representative. After the cards were admitted counsel for the Board withdrew the name of Vincent Nicastro. The number of names entitled to be counted as affiliated with Local No. 149 is thus reduced to thirty-four. It thus becomes apparent that Local No. 149 represented more than a majority of respond-

ents' employees in the tailoring department. It is also proper to note that the union would also have had a majority if all of the employees working that week had been included in the unit.

33. The tailoring department employees, excluding supervisory employees, employed by the respondents constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act.

34. A majority of said employees had designated the International Ladies' Garment Workers' Union, Local No. 149, by Harry A. Posner, its manager, a labor organization as defined in the National Labor Relations Act, as their representative for the purpose of collective bargaining with respondent in respect to rates of pay, wages, hours of employment, and other conditions of employment. At all times since August 28, 1935 and September 6th, the International Ladies' Garment Workers' Union, Local No. 149, by Harry A. Posner, its manager, has been, by virtue of Section 9 (a) of said Act, the exclusive representative of all employees in such unit for the purpose of collective bargaining with the respondents in respect to rates of pay, wages, hours of employment and other conditions of employment.

35. The International Ladies' Garment Workers' Union, Local No. 149, by Harry A. Posner, its manager, has attempted on August 30th, and September 6th, 1935, to bargain collectively with respondents, as exclusive representative of respondents' tailoring department employees in respect to rates of pay, wages, hours of employment, and other conditions of employment.

36. The respondents did, on August 30, and September 6, 1935, refuse to bargain collectively with the International Ladies' Garment Workers' Union, Local No. 149, by Harry A. Posner, its manager, as exclusive representative of respondents' production employees in respect to rates of pay, wages, hours of employment and other conditions of employment.

IV

INTERSTATE COMMERCE ASPECTS OF RESPONDENTS' BUSINESS

37. In order to avoid complying with an arbitration award in favor of the union representing the employees of Lee Sportswear Co. in New York City, under the terms of its agreement with the union Benjamin Fainblatt, the father of the proprietors of that company and one of the respondents in this proceeding, and his daughter, one of the partners in Lee Sportswear Co., established the Somerville Manufacturing Company and the Somerset Manufacturing Co. in Somerville, N. J. Respondents have discontinued using the name Somerville Manufacturing Co., but under the name Somerset Manufacturing Co. they are an exclusive contractor for the Lee Sportswear Co. The raw materials used by respondents are wool textile fabrics and cotton textile fabrics. All of the raw material, converted into garments by respondents, are owned by the Lee Sportswear Co. Although the proportion varies from time to time, it is customary for the Lee Sportswear Co. to furnish the material already cut and ready for the operators to sew. If the Lee Sportswear Co. is very busy, material is sent to the respondents for cutting. Sometimes, however, the material is

shipped directly from the mills to respondents in Somerville, where it is cut. Respondents receive extra compensation for the cutting, whether the uncut material comes from the mills or from Lee Sportswear Co. Some of the mills from which respondents receive these shipments are located outside the state of New Jersey. During recent months most of the material has been cut when received by respondents. After the garments are made up they are shipped back to the Lee Sportswear Co. in New York City, although some of them are turned over to a representative of that company stationed at the Somerville plant, who may ship them directly to customers. Most of the raw materials and finished garments are handled by an expressman or trucking concern, Sissler Brothers, of Somerville, N. J. Lee Sportswear Co. pays the trucking charges. In general no stock of raw materials is maintained at the Somerville plant, although there are times when there is more work on hand than at others. The only record of incoming shipments to respondents is in the office of Lee Sportswear Co. The finished garments are shipped back to Lee Sportswear Co. in New York City, or turned over to the Lee Sportswear Co. representative at Somerville, as soon as the garments are finished. There are "constant" shipments of raw materials from New York City to Somerville and constant, but not always daily shipments of the finished garments from Somerville to New York City. The records of shipments to the Lee Sportswear Company are the only production records kept by respondents. The principal operations at respondents' plant are sewing and finishing, although occasionally some cutting is done. The garments may go through as many as

fifteen hands and are then packed and shipped. One of the "general men", Al, does most of the shipping work, including the packing for shipping, although he has been assisted at least twice by one of the floor girls, and at other times by shipping clerks sent to Somerville from New York City.

38. Counsel for the Board and for respondents stipulated that the Somerset Manufacturing Co. manufactures and converts raw materials of the Lee Sportswear Co. into a finished product for the exclusive account of the Lee Sportswear Company in New York City; and that the Lee Sportswear Company, New York City, sells and distributes for its own account the entire aforementioned converted manufactured products throughout the United States. The garments as finished by respondents do not carry any label. Sol Fainblatt, Benjamin Fainblatt's son, is employed by and acts as the Somerville agent of the Lee Sportswear Co. He goes to New York City each morning as a part of his work, gets his orders, returns to Somerville, N. J. about two o'clock in the afternoon, and ships his goods out. The goods that he ships are those turned over to him by respondents. The Lee Sportswear Co. pays in advance for the garments manufactured by respondents. This payment represents principally the labor involved in the cost of manufacture. The business of respondents is seasonal, but the plant is always kept running, even during slack months. The Lee Sportswear Co. gives work to respondents even when work is not given to other contractors.

39. In September, 1934, the Somerset Company shipped 1871 dozen finished garments. In October

and November, 1934, the total shipments of the Somerset and Somerville companies amounted to 1040 dozen and 1032 dozen. In September 1935, the shipments of the Somerset company amounted to 1214 dozen, and for the period October 1 to 14, the shipments amounted to 651 dozen. The shipments for other months were not in the record of this hearing.

In respect to the effect of the strike upon production, Mr. Fainblatt testified that, "the strike affected it that we made up less garments. If there are so many people less working so many garments less are made up." Respondents did not replace the strikers immediately, but after an indefinite period began to add new workers gradually. Not until about January 1st, 1936, was the working force as large as it had been just prior to the strike. The business of respondents is clearly of an interstate nature. Most of the raw materials used in respondents' plant are partially processed in New York City and are then sent to respondents' plant in Somerville, N. J. for further processing and finishing. The finished garments are sent back to New York City, and from there are distributed throughout the United States. The raw materials processed in, and the finished products of respondents' plant are clearly transported in interstate commerce and constitute a continuous flow of commerce among the several states. It cannot be denied that in this instance there was a labor dispute affecting commerce among the states.

40. The establishment of the respondents' plant in Somerville, N. J., to manufacture garments not permitted under the union agreement with the Lee

Sportswear Co. in New York City, was the outgrowth of a labor dispute ostensibly settled by arbitration. In this proceeding consideration is being given to another labor dispute, involving legal and moral rights, rather than contract rights. This dispute was brought on by the adoption of such devices as keeping two sets of books while operating under N. R. A. codes, one set for the code officials indicating compliance with the minimum wage provisions of the code, and one set setting forth the amount actually paid to the employees in somewhat lower figures. Other matters have already been discussed, such as the cutting of rates after the invalidation of N. R. A. codes and the accompanying establishment of irregular hours. When the employees sought to join together for their protection and in attempt to obtain more decent conditions of employment, Fainblatt learning of these efforts attempted to thwart them, by discharges and holding meetings. In this he was assisted by two leading public officials in the community. On the witness stand Fainblatt said he would quit his business before he would have an outsider running it. Mr. Fainblatt apparently did not consider this position when he invited Mayor Hess, Sheriff Adams, and Mr. Hawley to speak to his employees. During his talk with respondents' employees Mayor Hess told them that if they went on strike they would have to go on relief, apparently without considering the union objectives of stabilizing employment and raising wages, and the effect the accomplishment of these objectives would have upon the income and relief costs in the community.

The first meeting held by Mr. Fainblatt with his employees was on August 21st, 1935, the second

meeting was on August 28th, 1935. At the first meeting held on the second floor where the operators work, Mr. Fainblatt closed the doors, shut off the power, and called the girls around him, at about 4:30 in the afternoon, and introduced Mayor Hess, who then spoke to them. One witness testified as to the talk of Mayor Hess that, "He told us to stick to our boss because that is where our bread and butter was; and that we should have no connection with the union, that our boss was against the union, that if we walked out on strike, we would be on relief and it was terrible to be on relief, and he told us to bring our troubles to the boss". Mr. Hawley told of his misfortunes in belonging to a union and that "it would do no good to join a union". The next meeting was held a week later. When the girls came downstairs to the main floor to get their pay, they found that they could not get their money. Fainblatt said that there was someone he wanted to introduce to the girls. He then introduced Sheriff Adams, who told them, in the words of one of the girls, "We had a nice clean place, he said it was clean and sanitary and he don't believe that any girl made low pay in there. He said he was looking over the payroll, he did not think so, and he told us we shall have no connection with the Union because Mr. Fainblatt would never sign for a union". Mr. Fainblatt also spoke to the girls and urged them to bring their troubles to him.

41. By holding said meetings with their employees, respondents have discouraged membership in the labor organization known as International Ladies' Garment Workers' Union, Local No. 149.

42. The aforesaid unfair labor practices of re-

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spondents led to unrest and confusion among respondents' employees, and led to a labor dispute burdening and obstructing commerce and the free flow of commerce between the State of Indiana and the other states from which respondents receive raw materials and to which respondents ship ladies garments manufactured in the plant at Somerville, N. J.

CONCLUSIONS AND RECOMMENDATIONS

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes:

43. Respondents by discharging and refusing to employ Elizabeth Schoka, Ethel Rice, Lorraine Heitz, Angelina Matteis, Mary Geeik, Theresa Yemma, Fay Katz, and Anna Santoro, by discouraging membership in the labor organization known as International Ladies' Garment Workers' Union, Local No. 149, and by interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as set forth in the above findings of fact, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision 1, and Section 2, subdivision 6 and 7 of the National Labor Relations Act.

44. Respondents by discharging and refusing to employ Elizabeth Schoka, Ethel Rice, Lorraine Heitz, Angelina Matteis, Mary Geeik, Theresa Yemma, Fay Katz, and Anna Santoro, and by thus discriminating in regard to tenure of employment, and discouraging membership in a labor organization known as the International Ladies' Garment

Workers' Union, Local No. 149, as set forth in the above findings of fact, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (3), and Section 2, subdivisions (C) and (7), of the National Labor Relations Act.

45. Respondents, by refusing to bargain collectively with the International Ladies' Garment Workers' Union, Local No. 149, the representative of their employees' own choosing, and by interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as set forth in the above findings of fact, have engaged in and are engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (1), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

46. Respondents, by refusing to bargain collectively with the International Ladies' Garment Workers' Union, Local No. 149, the representative designated and selected for the purpose of collective bargaining by the majority of their employees in an appropriate unit, have engaged in and are engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (5), and Section 2, subdivisions (6) and (7), of the National Labor Relations Act.

Wherefore, the undersigned recommends that:

1. Respondents cease and desist from interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain col-

lectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

2. Respondents cease and desist from discouraging membership in any labor organization by discrimination in regard to hire or tenure of employment or any term or condition of employment.

3. Respondents cease and desist from refusing to bargain collectively with the International Ladies Garment Workers' Union, Local No. 149, by Harry A. Posner, its manager, the representative of their production employees.

4. In order to effectuate the policies of the Act, respondents take the following affirmative action:

(a) Offer to Elizabeth Schoka, Ethel Rice, Lorraine Heitz, Angelina Matteis, Mary Gecik, Theresa Yemma, Fay Katz, and Anna Santoro, immediate and full reinstatement, respectively, to their former positions without prejudice to their seniority or other rights and privileges previously enjoyed.

(b) Make whole said Elizabeth Schoka, Ethel Rice, Lorraine Heitz, Angelina Matteis, Mary Gecik, Theresa Yemma, Fay Katz, and Anna Santoro, for any losses of pay they have suffered by reason of their discharge, by payment of a sum of money equal to that which each, respectively, would normally have earned as wages, less earnings from other employment, during the period from the date of their respective discharges to the date of such offer of reinstatement. In case of a failure to agree upon the correct amount of such payment, either party may notify the Regional Director for the Second

Region of the National Labor Relations Board. Said Regional Director shall hold a hearing, at which respondents shall produce all records necessary for the said Regional Director to make a determination of the said amount due. Said Regional Director shall make such a determination, which shall be final and binding upon all parties.

(c) Post a notice in a conspicuous place readily accessible to all employees stating that respondents will not discriminate against any employee because of membership in any labor organization, such notice to be kept posted for a period of three months.

(d) Reinstate all striking employees to their former positions without discrimination, upon application by said striking employees or their representatives, and upon reinstatement proceed to bargain collectively with the International Ladies' Garment Workers' Union, Local No. 149.

(e) File with the National Labor Relations Board, on or before April 14th, 1936, a report in writing setting forth in detail the manner and form in which they have complied with the foregoing requirements.

It is further recommended that, unless on or before April 14th, 1936, the respondents notify the National Labor Relations Board in writing that they will comply with the foregoing recommendations, that said Board issue an order requiring respondents to take the action aforesaid.

Dated: April 3rd, 1936.

ROBERT M. GATES,
Trial Examiner.

**ORDER TRANSFERRING PROCEEDING TO
NATIONAL LABOR RELATIONS BOARD**

A charge having been duly filed in this case with the Regional Office for the 2d Region, and the Board deeming it necessary in order to effectuate the purposes of the National Labor Relations Act that the above entitled matter be transferred to and continued before it,

It Is Hereby Ordered, in accordance with Section 35 of Article II of the National Labor Relations Board's Rules and Regulations—Series I, that this proceeding be transferred to and continued before the Board.

By direction of the Board:

BENEDICT WOLF,
Secretary.

(Seal)

DECISION**STATEMENT OF THE CASE**

Upon an amended charge¹ duly filed by Harry A. Posner, as agent for Local No. 149, of the International Ladies' Garment Workers' Union, hereinafter referred to as Local No. 149, the Regional Director for the Second Region, on January 28, 1936, issued on behalf of the National Labor Relations Board, hereinafter referred to as the Board, a complaint against Benjamin Fainblatt,² and Margorie Fainblatt,³ individuals doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, both of Somerville, New Jersey, respondents herein. The complaint alleged that the respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (3) and (5) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, approved July 5, 1935, hereinafter re-

¹ The original charge was filed on October 14, 1935. The only change made in the amended charge was to add the name of Marjorie Fainblatt as respondent.

² Also known and referred to in the charge as Benjamin Feinblatt and in the complaint as Benjamin Fainblatt.

³ Referred to in the complaint as Margaret Feinblatt or Margorie Fainblatt.

ferred to as the Act. In substance, the complaint alleged:

1. The respondents are doing business in Somerville, New Jersey, under the firm names, Somerville Manufacturing Company and Somerset Manufacturing Company, and are engaged in the manufacture, sale and distribution of Women's sportswear. In the course of this business they have caused substantial amounts of raw material and finished goods to be purchased, transported and sold in interstate commerce.

2. Between the approximate dates of August 21 and September 18, 1935, the respondents, by their officers and agents, discharged and have since refused to reemploy Elizabeth Schoka,⁴ Angelina Matteis, Lorraine Heitz, Ethel Rice, Mary Gecik, Fay Katz and Anna Santoro⁵ for the reason that they had joined and assisted a labor organization known as Local No. 149 of the International Ladies' Garment Workers' Union, such discharge and refusal constituting unfair labor practices within the meaning of Section 8, subdivisions (1) and (3) of the Act.

3. On or about September 13, 1935, the respondents refused and have since refused to bargain collectively with Local No. 149 through Harry A. Posner, its representative, although at that time the membership of Local No. 149 constituted a majority of the production employees in the respondents.

⁴ Referred to in the complaint as Elizabeth Scheka.

⁵ The original and amended charges did not include the name of Anna Santoro.

Somerville plant and although the production employees constituted a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act, such refusal constituting unfair labor practices, within the meaning of Section 8, subdivisions (1) and (5) of the Act.

The complaint and the accompanying notice of hearing were duly served on the respondents and on Local No. 149. On February 4, 1936, the respondents filed an answer which admitted that they were engaged in business in Somerville, New Jersey in the manufacture of women's sportswear, but denied that they were engaged in its "sale and distribution," or that they were engaged in interstate commerce. The answer also denied that the respondents had engaged in unfair labor practices. As to the allegations regarding the proper unit for collective bargaining, the representative capacity of Harry A. Posner, as manager of Local No. 149, the refusal to bargain collectively, and the nature of the alleged acts as constituting unfair labor practices affecting commerce, the answer denied that the respondents had knowledge or information sufficient to form a belief. Finally, the answer asserted the unconstitutionality of the Act and its inapplicability to the respondents' business.

On February 15, 1936, in accordance with Article 11, Section 35, of National Labor Relations Board Rules and Regulations—Series 1, the Board ordered the proceeding to be transferred to and continued before it.

On February 17, 18 and 19, 1936, a hearing was held in Somerville, New Jersey, before Robert M. Gates, the Trial Examiner duly designated by the Board. The respondents, appearing specially,

moved to dismiss the complaint upon the grounds that the Act was unconstitutional and that the Board, having issued the complaint, was disqualified from exercising a judicial function by conducting the hearing. The motion was denied and the respondents then took part in the hearing without waiving their right to renew their objection in due course. Full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence and to file briefs was afforded to all parties; the respondents, however, called no witnesses and introduced no evidence. During the course of the hearing counsel for the Board moved to amend the complaint to conform the pleadings to the proof. The motion was granted. Counsel for the Board also moved to amend the complaint by adding the name of Theresa Yemma to the list of employees alleged to have been discharged by the respondents. The motion was granted over the respondents' objection. The respondents then moved to have the answer conformed to the amended complaint. The motion was granted. At the close of the case for the Board, the respondents moved to dismiss the complaint on the grounds that the Act is unconstitutional and if constitutional is inapplicable to the respondents' business. The motion was denied. The rulings of the Trial Examiner on all motions are hereby affirmed.

On February 24, 1936, the Board, acting pursuant to Article II, Section 3 (a) of said Rules and Regulations—Series 1, directed the Trial Examiner to prepare and file with it his intermediate report. On April 3, 1936, the Trial Examiner filed his intermediate report finding that the respondents had engaged and were engaging in the unfair labor prac-

tices alleged in the complaint and recommending, in substance, that they cease and desist therefrom, offer to reinstate the eight discharged employees listed in the amended complaint with back pay, reinstate all striking employees, and proceed to bargain collectively with Local No. 149. The Trial Examiner further recommended that unless the respondents filed with the Board on or before April 14, 1936, a written notification that they would comply with these recommendations, the Board should issue an order requiring such compliance. No such notification of compliance has been filed by the respondents nor have they filed exceptions to the intermediate report or any other part of the record.

Upon the entire record as thus made, including the pleadings, the evidence adduced at the hearing, and the Trial Examiner's intermediate report, the Board makes the following:

FINDINGS OF FACT

I.

RESPONDENT'S BUSINESS AND ITS RELATION TO INTER-STATE COMMERCE

1. In August, 1934, the respondent Benjamin Fainblatt, (hereinafter referred to as Fainblott) established the Somerville Manufacturing Company and the Somerset Manufacturing Company in Somerville, New Jersey. Though separately registered, the companies were in fact identical, the two names having been adopted for reasons immaterial here. The respondent, Margorie Fainblatt, Benjamin Fainblatt's daughter, is registered as part owner of the Somerset Manufacturing Company, but Fain-

blatt's testimony indicates that her ownership is largely formal and that he is in fact in full control. On or about February 15, 1935, Fainblatt discontinued the use of the name Somerville Manufacturing Company.

2. The Lee Sportswear Company, New York, New York, (hereinafter called Lee Sportswear) is a partnership composed of Fainblatt's children, Margorie, Leo and Irving. Prior to August, 1934, Fainblatt had been employed by Lee Sportswear as general supervisor of its shop in New York. Following an adverse decision in the arbitration of a dispute with the union representing the employees of Lee Sportswear, Fainblatt came to Somerville and established his present business. The necessary capital was loaned to him by Lee Sportswear in return for a chattel mortgage on his machinery.

3. Counsel for the respondents stipulated with counsel for the Board that the Somerset Manufacturing Company (and prior to February, 1935, the Somerville Company) at its plant in Somerville, New Jersey, manufactures and converts raw material of Lee Sportswear into finished products for the exclusive account of Lee Sportswear, which sells and distributes these finished products for its own account throughout the United States. The products are for the most part women's sport clothing, such as snow suits, ski pants, slacks, beach wear, shorts, etc.

4. The raw material, title to which remains throughout in Lee Sportswear, is usually cut by that company in New York City and shipped to the Somerset Manufacturing Company. Sometimes the raw material is shipped at the order of Lee Sports-

wear directly from the mills, many of which are outside the State of New Jersey, to the respondents' plant and is cut there.

5. As soon as possible after the raw material is received, it is made up into finished goods. Sol Fainblott, another of Fainblott's sons, is maintained by Lee Sportswear as its representative at the Somerville plant. After the raw material is manufactured and converted by the respondents, the finished goods are delivered to Sol Fainblatt. Some he ships directly to customers of Lee Sportswear throughout the United States; the rest he ships to Lee Sportswear itself in New York City. Such shipments are made on an average of four or five times a week; no goods are stored at the factory.

6. Fainblott operates under a standing agreement with Lee Sportswear, whereby he converts and finishes according to their order whatever raw materials they send him and is paid therefor at rates varying with the type of goods produced. These contractual payments are the business' only income, Fainblatt receiving no dividends from Lee Sportswear and having technically no financial interest therein. It appears, however, that Fainblatt is the principal or only manufacturer with whom Lee Sportswear contracts. Thus he testified in describing his relationship to Lee Sportswear: "The only unusual thing is whereas they are not supplying other contractors with work, they will supply me with work. That is the relationship between father and children."

7. Though technically an independent enterprise, the Somerset Manufacturing Company thus operates in fact as the principal manufacturing de-

partment of Lee Sportswear, a company engaged in selling sporting goods in interstate commerce. The operations of the respondents require and are a part of a continuous flow of goods in such commerce between the respondents and the mills, the respondents and Lee Sportswear and the respondents and the customers of Lee Sportswear. The volume of this flow varies directly with the volume of the respondents' output.

8. The aforesaid operations of the respondents constitute a continuous flow of trade, traffic and commerce among the several States.

II.

THE APPROPRIATE UNIT

9. The employees of the Somerset Manufacturing Company fall naturally into four classes: (1) those in the tailoring department; (2) the cutters; (3) the "general" or maintenance men; and (4) the supervisory staff. The workers in the tailoring department are for the most part either machine operators or "floor girls"; i. e., girls engaged in trimming, cleaning, folding and packing the goods. In addition there is one "finisher" who comes in only occasionally to sew on snaps, hooks and eyes, etc. There are two cutters, who work irregularly on material; Fainblatt himself referred to them as constituting a separate department. The activities of the four "general" men, though not described in detail in the record, seem to consist of such tasks as tending the machines, cleaning the floor, carrying material from one machine to another, etc. though occasionally they have helped to sew on eyelets. The

supervisory staff consists of a foreman, forelady, and a bookkeeper.

10. The tailoring department of the Somerset Manufacturing Company, consisting of the operators, floor girls, and finisher, constitutes a unit appropriate for the purposes of collective bargaining.

III.

THE DESIGNATION OF LOCAL NO. 149 AS REPRESENTATIVE OF THE EMPLOYEES IN THE TAILORING DEPARTMENT

11. Local No. 149 of the International Ladies' Garment Workers' Union is a labor organization which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work.

12. Following the invalidation of the National Industrial Recovery Act, Fainblatt instituted a series of severe wage cuts. On August 14, 1935, three employees of the tailoring department, Ethel Rice, Anna Santoro, and Mary Morano, at the request of a number of the others, went to the office of Harry A. Posner, manager of Local No. 149, at Plainfield, New Jersey. They asked his assistance in improving wages and working conditions in the respondents' plant. While at his office the three girls filled out application cards for membership in Local No. 149. They returned to the plant and persuaded another employee, Elizabeth Schoka, to fill out a card. Then as Posner had suggested, they called a meeting of interested employees for August 21, 1935. At that meeting, attended by Posner, at least 15 girls of the tailoring department filled out

application cards for membership in Local No. 149. Thirteen more applied at a second meeting on August 28 and two others applied shortly thereafter. According to the custom of Local No. 149, these 34 employees became members of Local No. 149 for purposes of collective bargaining upon the signing of their application cards, though none of them had as yet paid union dues. As further evidence of their membership, the Union has contributed regularly to their support during the strike.

13. The eight girls of the tailoring department who are found below to have been discharged for Union activities are included in the 34, since they continued to be employees of the Somerset Manufacturing Company within the meaning of Section 2, subdivision (3) of the Act. Application cards were also filled out by one of the "general" men and by at least seven individuals who, for reasons unknown to us, had been discharged or left the employment of the Somerset Manufacturing Company before September 6, 1935. As they were not in the tailoring department, the appropriate unit for collective bargaining, they have been excluded from our calculations.

14. At either the first or second meetings of Local No. 149, Harry A. Posner, as manager of Local No. 149, was chosen by the employees present to represent them in collective bargaining with the respondents. Regardless of when that choice was formally made, it is clear from the subsequent actions of all the 34 members of Local No. 149 that they ratified that choice.

15. During the week ending September 7, 1935,

at or about which time it is alleged that the respondents refused to bargain collectively, there were on the payroll of the Somerset Manufacturing Company, 53 employees of the tailoring department. To them must be added the six employees of that department who, we find below, had up to that time been discharged for union activities since August 14, 1935. One of the six, Elizabeth Schoka, was temporarily employed at that time by the Stars Dress Shop in Plainfield, New Jersey, but her employment there lasted only four or five weeks and cannot be considered "regular" or "substantially equivalent" to her position with the Somerset Manufacturing Company, within the meaning of Section 2, subdivision (3) of the Act. The total number of employees in the unit was thus 59. The 34 members of Local No. 149 were therefore in a clear majority. These figures continued unchanged until September 18, the day of the strike.

16. On September 6, 1935, Local No. 149 of the International Ladies' Garment Workers' Union had been designated by a majority of the employees in the tailoring department of the Somerset Manufacturing Company as their representative for the purpose of collective bargaining.

IV.

THE REFUSAL TO BARGAIN COLLECTIVELY

17. On or about August 30, 1935, Posner called on Fainblott at the plant, told him that he had been delegated by his employees to present certain demands for the improvement of conditions at the plant, and outlined these demands. Fainblott replied that he would take the proposals into consid-

eration and let him know his answer in a few days. On September 6, Posner called Fainblatt on the telephone. According to Posner's testimony, Fainblatt told him that he would have no dealings with him, would have nothing to do with a union, and that he did not recognize Posner as legal representative of his employees. Fainblatt testified that he did not remember saying he would never recognize a union for collective bargaining, but admitted that he said that before he would allow an outsider to run his business he would get out of it. In reply to subsequent questions by counsel for the Board as to his willingness to deal with Local No. 149, Fainblatt refused to give a direct answer, merely repeating three times "I will not let an outsider run my business."

18. Posner reported this rebuff to the members of Local No. 149. They voted unanimously to strike at 10 A. M., September 18. All of the 34 members of Local No. 149 who had not previously been discharged struck either at the time set or within a day or two thereafter. The strike is still in progress, though the record indicates that one or two of the girls have gone back to work.

19. About two weeks after the strike began, Posner went to the office of Mr. Girofsky, Mr. Fainblatt's attorney and representative, and attempted to open negotiations for a settlement. Girofsky informed him that "Mr. Fainblatt would not talk union or recognize anybody that had any connection with the union." At some subsequent date, Mr. Posner, his attorney, Mr. Feller, Mr. Girofsky, Mr. Fainblatt, and Mr. Moscovitz, Regional Attorney for the second Region, met and discussed terms of

settlement. Though the record is not clear, the meeting appears to have been fruitless.

20. On or about September 6, 1935, the respondents refused and have since continued to refuse to bargain collectively with Local No. 149, through Harry A. Posner, as representative of the employees in the tailoring department of the Somerset Manufacturing Company.

21. The strike of certain of the respondents' employees on September 18, 1935, resulted directly from the respondents' refusal to bargain collectively.

VI.

DISCRIMINATORY DISCHARGES

22. It is alleged that between August 14 and September 18, 1935, the respondents discharged and have since refused to reinstate the following employees because of their union activities:

(a) Elizabeth Schoka had been employed as an operator by the Somerset Manufacturing Company since August, 1934, save for a brief interval when she had been temporarily laid off because of lack of work. For a while she had been classed as a "learner," but for some months before her discharge she had been classed as a regular operator and accordingly had been paid at piece rates. Since the invalidation of the National Industrial Recovery Act she had averaged from \$9.00 to \$12.00 a week. There is no evidence that she had been inefficient or below standard in any way. On August 14, 1935, she met the three girls returning from their visit to Mr. Posner, and filled out an application card for

union membership. Shortly before or after this date, Fainblatt called her to his office and asked her "Who approached you to sign the union—Frank or his wife?"⁶ She replied "Nobody." A few days later, she was told by the foreman, "You are causing too much trouble. Get your work and go home." She went home at once. Since that time she has worked for four or five weeks for the Stars Dress Shop in Plainfield, New Jersey, at \$17.00 a week.

(b) Lorraine Heitz began working for the Somerset Manufacturing Company as a floor girl in April, 1935, and was employed continuously until the time of her discharge. There is no evidence that she was inefficient in any way. Since the invalidation of the National Industrial Recovery Act she had been paid 21 cents an hour. Two weeks before her discharge this rate was cut without notice to 18 cents an hour. Her hours were irregular, averaging between thirty to thirty-five hours a week. She had taken some leadership in inviting girls to the first meeting of Local No. 149. Shortly before the meeting the foreman asked her if she was interested in Local No. 149 and for information about it. She had replied she had no information to give him. On the afternoon of August 21 she was quite busy and worked overtime. Before leaving she and Ethel Rice, as was customary, asked Fainblatt what time they were to come in next morning. He replied, "I am sorry, girls, there is no work for you." They

⁶ The identity of "Frank" is not made clear in the record.

⁷ Also known and listed on the payrolls as Lorraine Vones.

asked him why and he replied, "I have no more work for you girls, you will have to go to the union." Both girls testified that at that time there was an exceptionally large amount of work to do. The next morning they returned to get their pay and asked Mr. Fainblott again for work. He replied that he had told them once before that he had no work for them and opening the door of the first floor where the floor girls usually worked showed that there was no one there. On their way in, however, they had already seen the other floor girls waving to them from the windows of the third floor. Since her discharge Lorraine Heitz has not obtained employment elsewhere.

(c) Ethel Rice began working as a floor girl for the Somerset Manufacturing Company in January, 1935, and was employed continuously until her discharge. There is no evidence that she was in any way inefficient. Since the wage cut following the invalidation of the National Industrial Recovery Act, she had been paid 25 cents an hour. Her hours were irregular, her weekly pay ranging from \$6 to \$10 a week. She was one of the three girls who visited Posner on August 14 and asked his help in forming a union. She was active in trying to interest girls in Local No. 149 and in inviting girls to the first meeting. Her account of the discharge of Lorraine Heitz and herself on the afternoon of August 21, 1935, tallies with that given by Lorraine Heitz in all essentials, including the facts of their overtime work, the use by Fainblatt of substantially the language, "I have no more work for you girls—you can go to the Union for work," and the effort of Fainblatt to convince them that there was no work by showing them the empty first floor while

the other floor girls were upstairs. The record does not reveal whether or not she has worked elsewhere since her discharge.

(d) Angelina Matteis began work as an operator for the Somerset Manufacturing Company about a year before her discharge. Save for a few lay-offs of a half a day or so in slack seasons, she was employed continuously the entire year. There is no evidence that she was inefficient in any way. She worked at piece rates averaging from \$8 to \$12 a week. She had been active in inviting the girls to the first meeting of Local No. 149. At that first meeting she joined. A few days later, when she reported for work in the morning, she was told by the foreman "I am sorry you are causing too much trouble. I have no more work for you." She went home at once. Since that time she has worked for one week at a shop in Plainfield, receiving \$14.

(e) Mary Gecik began work as an operator at the Somerset Manufacturing Company in March, 1935, and was employed continuously until her discharge. There is no testimony that she was in any way inefficient. After the wage cut that followed the invalidation of the National Industrial Recovery Act she averaged at piece rates from \$7 to \$8 a week. She joined Local No. 149 at its first meeting, on August 21. A few days thereafter, when she went to work in the morning, she was told by the foreman, "I have not any more work for you. You are causing too much trouble. If you want work go to the Union. The Union will give you work." She left at once. She has not been employed since her discharge.

(f) Fay Katz began working as an operator with the Somerset Manufacturing Company in Decem-

ber, 1934, and was employed continuously until her discharge. There is no evidence that she was in any way inefficient. She was paid at piece rates. Her hours varied from 14 to 40 hours a week during the last five weeks of her employment. When she worked 40 hours her pay averaged \$7 or \$8 a week. She was active in talking to the girls about Local No. 149 and in inviting girls to its meetings, and joined on August 21. The forelady had spoken to her concerning Local No. 149 at about the time of this first meeting. When she reported to work a few days before the strike, Fainblott refused to allow her into the plant, saying: "I have no work for you." When she said he had given other girls work, he replied: "I don't owe you anything. If you want work you can go to the Union." Since that time she has worked four and one-half days at a shop in Plainfield, receiving a little over \$15.

(g) Anna Santoro was employed as an operator by the Somerset Manufacturing Company from the time it opened until her discharge. According to her uncontradicted testimony she was one of the fastest and highest paid of the operators. Since the invalidation of the National Industrial Recovery Act she had been paid at piece rates between \$8 and \$9 a week. She was one of the three girls who visited Mr. Posner at his office in Plainfield, and had attended all the union meetings of Local No. 149. On the morning of the strike, September 18, the forelady, after first speaking to a girl who worked beside her and then to the foreman, came over to her, said to her "no more work for you." She also told her that she had heard that she was the one that was going to blow the whistle to call the girls out on strike and that she was the one that had

started all the trouble by going to Mr. Posner. She left at once, fifteen minutes before the strike was called.

(h) Theresa Yemma was employed by the Somerset Manufacturing Company from April, 1935, to the time of her discharge. She worked some of that time as a floor girl and the rest as an operator. There is no evidence that she was in any way inefficient. There is no information in the record as to the rate of her pay after the invalidation of the National Industrial Recovery Act. She joined Local No. 149 on August 21 at its first meeting. During the following week, though she reported regularly for work, she was given nothing to do by the foreman, though there was much to do at which she was experienced. Finally, the day after the second meeting of Local No. 149, when she went for her pay, the foreman told her he had no work for her, that she had been causing too much trouble. She left at once. According to her uncontradicted testimony, she had never been disciplined or reprimanded during her previous employment by the company. Since her discharge she has worked from the middle of September to the end of December at another plant at an average pay of \$13 a week. She also worked for the M. H. Fishman Department Store on each Saturday during October, November and December, at 21 cents an hour, usually for 10 hours a day.

23. The respondents insisted at the hearing that these eight girls had not been discharged but had been temporarily laid off because of lack of work. Discrimination through the laying off of employees active in union organization is as clearly within the prohibition of Section 8, subdivision (3), of the Act, as is their discharge. In any event, we cannot ac-

cept the respondents' explanation that the girls were laid off. Fainblott himself testified that one of his busy seasons began in August or September. Previous lay-offs due to lack of work had usually lasted not more than a few days and the longest mentioned in the record was from the middle of December to "sometime after the New Year." Fainblott himself customarily notified girls who had been laid off when to return. He testified that he has taken on new employees to replace both the girls on strike and the eight allegedly discharged, and there is no evidence in the record that he sent any such notification to the eight girls in question. All eight had joined Local No. 149, either at or before its first meeting; several had helped to organize that meeting; two had visited Mr. Posner and asked his aid. The supervisory staff evidently suspected or knew of these activities, as their questions to some of the eight reveal. Upon being discharged, all eight were told either that they were causing trouble or that they should "go to the union for work."

24. The record contains further evidence of Fainblott's deep hostility to Local No. 149 and his determination to thwart any effort to organize his plant. Fainblatt testified that before the first meeting of Local No. 149 he learned from certain girls in the plant that an effort to organize the employees was being made. On the afternoon of August 21, the day set for the first meeting, Fainblatt invited Mayor Hess of Somerville and a Mr. Hawley, from whom he had rented the plant, to speak to the girls. He insured the full attendance of the machine operators by closing the doors of the second floor where they worked, turning the power off, and tell-

ing them to gather around. The Mayor then addressed them, telling them, in substance, to have no connection with Local No. 149, but to stick to the boss where their bread and butter came from, and warning them that their boss would have nothing to do with Local No. 149, and that if they went on strike they would have to go on relief. Mr. Hawley recounted his own experience as a member of a union which had struck unsuccessfully, and advised the girls against joining.

25. On August 28, the afternoon before the second meeting of Local No. 149, Fainblatt invited Sheriff Adams of Somerset County to the plant. When the girls came downstairs to get their pay, Fainblatt closed the doors and refused to allow anyone to be paid until they were all gathered together. Sheriff Adams then spoke advising the girls against joining Local No. 149 because Fainblatt would never sign an agreement with a union.

26. Several employees testified to the substance of these addresses. Fainblatt testified that in none of them was a union mentioned, but that the speakers merely asked the girls not to make trouble for a peaceful factory. When pressed, however, he admitted that he had heard of Local No. 149 and of a possible strike, and said he "presumed" the speakers came to discuss the threatened strike. As against the testimony of the employees, and in the light of his admitted knowledge of the plans for a union, we find his assertion that the strike and "trouble" were discussed without mention of the union to be unworthy of credence.

27. In the light of the language used in connec-

tion with the discharges and of all the attendant circumstances, we find that the respondents, or their agents, by discharging the eight girls named in the amended complaint for the reason that they joined and assisted Local No. 149, discriminated against them in regard to hire and tenure of employment, thereby discouraging membership in a labor organization. We also find that by such discharges, the respondents interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

28. It is clear from the record that the discharged girls have not applied individually to the respondents for reinstatement. It is equally clear that their reinstatement was among the terms offered by Posner to the respondents in his effort to settle the strike, and was rejected by them when they refused to bargain collectively. Two weeks before the hearing Fainblatt offered through Commissioner of Conciliation Moffet of the United States Department of Labor to re-employ seven workers at once and the balance as he could absorb them, but according to Posner, the terms included the dropping of union affiliations. Fainblatt himself said that he would employ workers individually, but not "as a body." In view of Fainblatt's attitude toward the union and toward collective bargaining, it is evident that he conditioned reinstatement upon the abandonment by the girls of the rights guaranteed in Section 7 of the Act. Such a condition can only be treated as a refusal to reinstate.

VII.

THE EFFECT UPON COMMERCE

29. Between September 1 and 17, 1934, approximately 1065 dozen finished garments were shipped from the respondent's plant. From September 18 to 30, 1934, approximately 987 dozen garments were shipped. Though the record is incomplete as to the shipments in October, 1934, it is clear that at least 1011 dozen were shipped. The shipments from September 1 to 17, 1935, totaled approximately 857 dozen. The strike in this case began on September 18, 1935. The shipments from September 18 to 30, 1935, totaled approximately 373 dozen. In October, 1935, the record reveals that there were at least 680 dozen shipped, although there may have been more. Thus, while in September, 1935, before the strike, the plant's output was about 80 per cent of the figure for the same period in 1934; after the strike its output dropped to less than 38 per cent of that during the same period in 1934. Though the record is not clear, it seems probable that the former level of production was not regained during October.

30. The aforesaid acts of the respondents have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VIII.

THE REMEDY

31. That the eight discharged girls and those who struck on September 18, 1935, are now without employment (except for one or two who may have

returned) is a direct result of the unfair labor practices in which the respondents are found to have engaged. To repair the damage done and return the parties as nearly as possible to the status quo ante these employees must be reinstated and the eight discharged for union activity must receive, in addition, back pay. The record indicates that since September 18, 1935, the discharged or striking employees have been replaced by others. It also indicates that the respondents' activities are seasonal and that the number they can maintain in employment varies. We will order, therefore, that the respondents offer to reinstate the eight discharged employees with back pay and also that they offer to reinstate all striking employees whose positions have been filled by others employed since September 18, 1935. The remaining striking employees must be placed on a preferential list and offered employment according to their seniority in the respondents' employ as work for them becomes available. Without such reinstatement, our order that the respondents bargain collectively with Local No. 149 would be meaningless and futile and the purpose of the Act could not be effectuated.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board finds and concludes as a matter of law:

1. Margorie Fainblott, as registered part owner of the Somerset Manufacturing Company, is properly a respondent in this proceeding, together with the actual owner, Benjamin Fainblott.
2. Local No. 149 of the International Ladies'

Garment Workers' Union is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

3. The tailoring department of the Somerset Manufacturing Company is a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9(b) of the Act.

4. By virtue of Section 9(a) of the Act, Local No. 149 of the International Ladies' Garment Workers' Union, having been designated on or before September 6, 1935 by a majority of the employees of the Tailoring department of the Somerset Manufacturing Company as their representative for the purposes of collective bargaining, has been at all times since said date the exclusive representative of all said employees for the purposes of collective bargaining.

5. By refusing and continuing to refuse to bargain collectively with Local No. 149 of the International Ladies' Garment Workers' Union as the exclusive representative of the employees in the tailoring department of their plant, the respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8, subdivision (5) of the Act.

6. By discriminating in regard to hire and tenure of employment against Elizabeth Schoka, Lorraine Heitz, Ethel Rice, Angelina Matteis, Mary Gecik, Fay Katz, Anna Santoro and Theresa Yemma, thereby discouraging membership in Local No. 149 of the International Ladies' Garment Workers' Union, the respondents have engaged in and are

engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

7. By refusing and continuing to refuse to bargain collectively with Local No. 149 as aforesaid and by discriminating in regard to hire and tenure of employment as aforesaid, thereby interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7) of the Act.

Order

On the basis of the foregoing findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Benjamin Fainblatt and Margorie Fainblatt, individuals doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, shall:

1. Cease and desist from:

(a) In any manner interfering with, restraining, or coercing their employees in the exercise of their right to join and assist Local No. 149 of the International Ladies' Garment Workers' Union or any other labor organization;

(b) Discouraging membership in Local No. 149 of the International Ladies' Garment Workers' Union, or in any other labor organization of

their employees by discharging, refusing to reinstate, or otherwise discriminating in regard to tenure or terms of employment against employees who have joined or assisted Local No. 149 or any other labor organization of their employees;

(c) Refusing to bargain collectively with Local No. 149 of the International Ladies' Garment Workers' Union as the exclusive representative of the employees in the tailoring department of the Somerset Manufacturing Company.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Local No. 149 of the International Ladies' Garment Workers' Union as the exclusive representative of its employees in the tailoring department in respect to rates of pay, wages, hours of employment and other conditions of employment.

(b) Offer to Elizabeth Schoka, Lorraine Heitz, Ethel Rice, Angelina Matteis, Mary Gecik, Fay Katz, Anna Santoro and Theresa Yenma immediate and full reinstatement to their former positions without prejudice to any rights and privileges previously enjoyed.

(c) Offer employment to all employees of the tailoring department who went on strike on September 18, 1935, or within one week thereafter where positions held by such employees on September 18, 1935 are now held by persons who were not employees of the respondents on September 18, 1935, but were employed subsequently thereto, and place all other employees who struck on September 18, 1935, or within the following week on a preferential list to be offered employment according to their seniority

in respondents' employment, as and when their labor is needed.

(d) Make whole said Elizabeth Schoka, Lorraine Heitz, Ethel Rice, Angelina Matteis, Mary Geeik, Fay Katz, Anna Santoro and Theresa Yemma for any loss of pay they have suffered by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which she would normally have earned as wages during the period from the date of her discharge to the date of such offer of reinstatement, less earnings from other employment during such period.

(e) Post notices in conspicuous places in the plant stating (1) that the respondents will cease and desist in the maner aforesaid, and (2) that such notices will remain posted for a period of thirty (30) consecutive days.

Signed at Washington, D. C., this 3rd day of June, 1936.

J. WARREN MADDEN,
Chairman.

JOHN M. CARMODY,
Member

EDWIN S. SMITH,
Member.

(SEAL) *National Labor Relations Board.*

Affidavit as to Service

District of Columbia, ss:

I, Kenneth Ayres, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C., that on the 3rd day of June, 1936; I mailed postpaid, bearing Government

frank, by registered mail, a copy of the Decision to the following named persons, addressed to them at the following addressees:

Leon Girofsky, Esquire,
Central Building,
Somerville, New Jersey.
Alexander Feller, Esquire,
Schenck Bldg.,
41-43 Paterson Street,
New Brunswick, N. J.

(S.) KENNETH AYRES.

Subscribed and sworn to before me this 3rd day of June, 1936.

(Seal)

HAROLD G. WILSON,
Notary Public.

My commission expires 5-15-41.

RETURN RECEIPT

Registered Article No. 830470

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Leon Gerofsky

(Signature or name of addressee)

E. B. Hanna

(Signature of addressee's agent)

Date of delivery June 5, 1936

Form 3811

RETURN RECEIPT

Registered Article No. 830471

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Alexander Feller

(Signature or name of addressee)

Anna Ruh

(Signature of addressee's agent)

Date of delivery 4 June, 1936

Form 3811

CERTIFICATE OF NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Secretary duly authorized by Section 1 of Article VI of the Rules and Regulations of the National Labor Relations Board—Series 1, as amended, effective the 28th day of April, 1936, does hereby certify that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding before said Board entitled "In the Matter of Benjamin Fainblatt and Margorie Fainblatt, individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company and International Ladies' Garment Workers' Union, Local No. 149," the same being Case No. C-53 before said Board, said transcript including the pleadings, testimony, and evidence upon which the Order of the Board in said proceeding was entered and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Copy of charge made by International Ladies' Garment Workers' Union, Local No. 149, dated October 14, 1935.

2. Copy of amended charge made by International Ladies' Garment Workers' Union, Local No. 149, filed with the Board January 27, 1936.

3. Copy of Complaint and Notice of Hearing issued by National Labor Relations Board on January 28, 1936.

4. Copy of Answer of Respondents, filed February 4, 1936.

5. Copy of Order of the National Labor Relations Board designating Robert M. Gates Trial Examiner, issued February 14, 1936.

6. Copy of Order of the National Labor Relations Board Transferring Proceeding to the National Labor Relations Board, issued February 15, 1936.

7. Copy of Order of the National Labor Relations Board directing the Trial Examiner to prepare and file an Intermediate Report, issued February 21, 1936.

8. Documents listed hereinabove, under items 1-5, inclusive, are contained in Board's Exhibit 1 included under the following item:

Stenographic Reports of Hearing before Robert M. Gates, Trial Examiner for the National Labor Relations Board, on February 17, 18 and 19, 1936, including all exhibits or copies thereof introduced in evidence.

9. Copy of Intermediate Report of the Trial Examiner filed with the National Labor Relations Board, April 3, 1936, together with affidavit of service and United States Post Office return receipt therefor.

10. Copy of Decision—Findings of Fact, Conclusions of Law and Order of the National Labor Relations Board—dated June 3, 1936, together with affidavit of service and United States Post Office return receipt therefor.

IN TESTIMONY WHEREOF, the Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 17th day of June, 1937.

BENEDICT WOLF,

Secretary

*National Labor Relations
Board.*

(Seal)

*Petition for Enforcement of
Order of N. L. R. Board*

In the
**UNITED STATES CIRCUIT COURT
OF APPEALS**

For the Third Circuit
National Labor Relations Board,
Petitioner,

v.

Benjamin Fainblatt and Margorie Fainblatt, Indi-
viduals, doing business under the firm names and
styles of Somerville Manufacturing Company, and
Somerset Manufacturing Company,
Respondents.

March Term, 1937.

**PETITION FOR THE ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR
RELATIONS BOARD**

*To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Third Circuit.*

The National Labor Relations Board (hereinafter referred to as the Board), pursuant to the authority conferred upon it by the provisions of an Act of Congress approved July 5, 1935 (Public No. 198, 74th Congress, 49 Stat. 449, C. 372, 29 U. S. C. A. Sec 151 et seq.), known as the National Labor Relations Act, respectfully petitions this Honorable

Court for the enforcement of a certain order issued by said Board in a proceeding instituted by it against respondent, Benjamin Fainblatt and Margorie Fainblatt, individuals doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company. Said proceeding is known upon the records of the Board as Case No. C-53, the title thereof being "In the Matter of Benjamin Fainblatt and Margorie Fainblatt, Individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company and International Ladies' Garment Workers' Union, Local No. 149".

In support of this petition, the Board respectfully shows:

(1) Respondents are and at all times herein mentioned were residents of and have and maintain an office and place of business and transact business in Somerville, in the State of New Jersey.

(2) By reason of the matters alleged in paragraph (1) hereof, this Court has jurisdiction of this petition by virtue of Section 10 (c) of said National Labor Relations Act.

(3) On the 28th day of January, 1936, a charge having theretofore been duly filed with the Board by International Ladies' Garment Workers' Union, Local No. 149, the Board issued its complaint in said proceeding No. C-53, charging that the respondents had engaged in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, which said complaint, together with a notice of hearing thereon, was, on the 28th day of January, 1936, duly served upon respondents,

said hearing having been noticed for the 17th day of February, 1936. Thereafter, on the 4th day of February, 1936, the respondents duly filed their answer.

(4) Thereafter, on the 14th day of February, 1936, the Board made an order designating Robert M. Gates as Trial Examiner. Thereafter, on the 15th day of February, 1936, the Board, in order to effectuate the purposes of the National Labor Relations Act, and in accordance with Section 35, Article II, of the National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered that this proceeding be transferred and continued before it, the Board.

(5) Thereafter, on the 17th, 18th and 19th days of February, 1936, the Board by said Trial Examiner duly held hearings upon the charges stated in said complaint, pursuant to due notice thereof. At said hearings, testimony and other evidence with respect to the charges stated in said complaint were adduced by the Board. At said hearings, the respondent, appearing specially, moved to dismiss the complaint. The motion was denied and the respondents then took part in the hearing without waiving their privilege to renew their objection in due course. Full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence and to file briefs was afforded to all parties. The respondents called no witnesses and introduced no evidence. The Board, however, adduced testimony and other evidence with respect to the charges stated in said complaint. During the hearing, counsel for the Board moved to amend the complaint to conform the pleadings to the proof. The motion was

granted. Counsel for the Board moved also to amend the complaint by adding the name of Theresa Yemma to the list of employees alleged to have been discharged by respondents. The motion was granted over respondents' objection. The respondents then moved to have the answer conformed to the amended complaint. The motion was granted. At the close of the Board's case respondents again moved to dismiss the complaint. The motion was denied.

(6) Thereafter, on the 21st day of February, 1936, the Board made an order directing said Trial Examiner to prepare and file his intermediate report, except that such report be filed with the Board, a copy of which was, on the 24th day of February, 1936, sent postpaid, bearing government frank, by registered mail, to respondents' attorney in Somerville, New Jersey.

(7) Thereafter, on the 3rd day of April, 1936, said Trial Examiner filed with the Board an intermediate report containing findings of fact and recommendations, which recommended that the Board issue an order of compliance unless respondents, on or before the 14th day of April, 1936, notified the Board in writing that they would comply with said Trial Examiner's recommendations.

(8) Thereafter, on the 3rd day of April, 1936, a copy of said Intermediate Report was mailed, postpaid, bearing government frank, by registered mail, to respondents' counsel in Somerville, New Jersey.

(9) Thereafter, on the 3rd day of June, 1936, the respondents having failed to comply with the recommendations of said Trial Examiner or to file

with the Board its exceptions to said Intermediate Report; and the Board, having duly considered the matter and being sufficiently advised in the premises and being of the opinion, upon all the testimony and the evidence, that the respondents had been and then were engaged in certain unfair labor practices affecting commerce within the meaning of said National Labor Relations Act, duly stated its findings of fact and issued and entered the following order directed to respondents:

"ORDER

On the basis of the foregoing findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Benjamin Fainblatt and Margorie Fainblatt, individuals doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, shall:

1. Cease and desist from:

"(a) In any manner interfering with, restraining, or coercing their employees in the exercise of their right to join and assist Local No. 149 of the International Ladies' Garment Workers' Union or any other labor organization:

(b) Discouraging membership in Local No. 149 of the International Ladies' Garment Workers' Union, or in any other labor organization of their employees by discharging, refusing to

reinstate, or otherwise discriminating in regard to tenure or terms of employment against employees who have joined or assisted Local No. 149 or any other labor organization of their employees;

(c) Refusing to bargain collectively with Local No. 149 of the International Ladies' Garment Workers' Union as the exclusive representative of the employees in the tailoring department of the Somerset Manufacturing Company.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Local No. 149 of the International Ladies' Garment Workers' Union as the exclusive representative of its employees in the tailoring department in respect to rates of pay, wages, hours of employment and other conditions of employment.

(b) Offer to Elizabeth Schoka, Lorraine Heitz, Ethel Rice, Angelina Matteis, Mary Geeik, Fay Katz, Anna Santoro and Theresa Yemma immediate and full reinstatement to their former positions without prejudice to any rights and privileges previously enjoyed.

(c) Offer employment to all employees of the tailoring department who went on strike on September 18, 1935 or within one week thereafter where positions held by such employees on September 18, 1935 are now held by persons who were not employees of the respondents on September 18, 1935 but were employed subse-

*Petition for Enforcement of
Order of N. L. R. Board*

quently thereto, and place all other employees who struck on September 18, 1935 or within the following week on a preferential list to be offered employment according to their seniority in respondents' employment, as and when their labor is needed.

(d) Make whole said Elizabeth Schoka, Lorraine Heitz, Ethel Rice, Angelina Matteis, Mary Gecik, Fay Katz, Anna Santoro and Theresa Yemma for any loss of pay they have suffered by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which she would normally have earned as wages during the period from the date of her discharge to the date of such offer of reinstatement, less earnings from other employment during such period.

(e) * Post notices in conspicuous places in the plant stating (1) that the respondents will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of thirty (30) consecutive days."

(10) Said order is, and at all times since its issuance, has been in full force and effect.

(11) Thereafter, on said 3rd day of June, 1936, said order was served upon respondents by sending a copy thereof postpaid, bearing government frank, by registered mail, to respondents' attorney in Somerville, New Jersey.

(12) Respondents have failed to comply with said order of the Board heretofore set forth in paragraph (9) hereof and have failed to indicate any intention to comply therewith and the Board accord-

ingly alleges that respondents will not comply therewith unless and until required so to do by this Court.

Wherefore, the Board petitions this Honorable Court for the enforcement of its order of the 3rd day of June, 1936, and pursuant to Section 10 (e) of said National Labor Relations Act, is certifying and filing with this Court a transcript of the entire record in the proceedings before the Board, including the pleadings, testimony and evidence, findings of fact and said order of the Board.

The Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondents and that this Court take jurisdiction of the proceedings and of the questions determined therein; and make and enter upon the pleadings, testimony and evidence and the proceedings set forth in the transcript and upon the order made thereupon, a decree enforcing in whole said order of the Board and requiring, respondents, its agents and representatives to comply therewith.

J. WARREN MADDEN,

Chairman,

EDWIN S. SMITH,

Member,

DONALD WAKEFIELD SMITH,

Member,

*National Labor Relations
Board.*

Dated at Washington, D. C., this 17 day of June, 1937.

CHARLES FAHY,

General Counsel,

National Labor Relations Board.

AFFIDAVIT

District of Columbia: ss

J. Warren Madden, Edwin S. Smith and Donald Wakefield Smith, being first duly sworn, state that they constitute the National Labor Relations Board; that they have read the foregoing petition subscribed by them and have knowledge of the contents thereof; and they further on oath state that the statements made in the foregoing petition are true to the best of their knowledge and belief.

J. WARREN MADDEN

EDWIN S. SMITH

DONALD WAKEFIELD SMITH

Subscribed and sworn to this 17th day of June,
1937, before me,

JOHN E. LAWYER,

(Seal)

Notary Public.

My commission expires September 8, 1939.

STIPULATIONS OF COUNCIL AS TO RECORD

It is hereby stipulated and agreed by and between the attorneys in the above-entitled case that the printed record in said case consist of the following:

1. The transcript of testimony as certified to the Court by the National Labor Relations Board in the matter before it known as Case No. C-53.

2. Documents included in Board's Exhibit 1 as follows: Complaint, Notice of Hearing, Respondents' Answer and Order Designating Trial Examiner.

It is further stipulated and agreed that none of the exhibits need be printed except those described above and included in Board's Exhibit 1, but shall be considered along with and part of the record, with the privilege reserved to either of the parties to have any of the exhibits printed and included in the printed record in the event that appeal is later taken.

Dated at Washington, D. C., this 25th day of June, 1937.

CHARLES FAHY,

General Counsel,

*National Labor Relations
Board.*

Dated at New York, N. Y., this 28th day of June 1937.

DAVID O. MOSCOWITZ,

Attorney,

*National Labor Relations
Board, Second Region.*

*Stipulations of Council as to
Record*

Dated at Somerville, N. J., this 30th day of June,
1937.

LEON GEROFISKY,
Respondents' Attorney.

It is hereby stipulated and agreed by and between the above named parties, through their respective attorneys, that the decision, findings of fact, conclusions of law, and order of the National Labor Relations Board be included in the printed record, in addition to the transcript of testimony and documents listed in a stipulation previously executed.

Dated at Washington, D. C., this 20th day of July,
1937.

ROBERT B. WATTS,
*Associate General Counsel,
National Labor Relations
Board.*

Dated at Somerville, N. J., this 22nd day of July,
1937.

LEON GEROFISKY,
Respondents' Attorney.

ORDER AS TO PRINTED RECORD

Upon stipulation by and between the attorneys in the above-entitled case and due consideration having been given, it is ordered that the printed record in said case consist of the following:

1. The entire record as certified to the Court by the National Labor Relations Board in the matter before it known as Case No. C-53, including the transcript of testimony and the Board's Decision.

2. Documents included in Board's Exhibit 1 as follows: Complaint, Notice of Hearing, Respondents' Answer and Order Designating Trial Examiner.

And it is further ordered that none of the exhibits need be printed except those described above and included in Board's Exhibit 1, but shall be considered along with and part of the record, with the privilege reserved to either of the parties to have any of the exhibits printed and included in the printed record in the event that appeal is later taken.

By the Court,

J. W. THOMPSON,

*Judge of the United States
Circuit Court of Appeals,
for the Third Circuit.*

Dated: Philadelphia, Pa., this 27th day of July,
1937.



UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 6490. March Term, 1938

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

BENJAMIN FAINBLATT, ET AL., DOING BUSINESS AS SOMERVILLE MFG.
Co., ETC., RESPONDENTS

Appeal from the National Labor Relations Board

And now, to-wit, this 17th day of March A. D. 1938, it is ordered that Hon. Oliver B. Dickinson, District Judge, for the Eastern District of Pennsylvania, and Hon. , District Judge, for the District of , be, and he is hereby assigned to sit in above case in order to make a full court.

JOSEPH BUFFINGTON,
Senior Circuit Judge.

Order Assigning Hon. Oliver B. Dickinson for Argument. Received & Filed Mar. 17, 1938. Wm. P. Rowland, Clerk.

In the United States Circuit Court of Appeals for the Third Circuit

No. 6490. October Term, 1937

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

BENJAMIN FAINBLATT AND MARGORIE FAINBLATT, INDIVIDUALS, DOING BUSINESS UNDER THE FIRM NAMES AND STYLES OF SOMERVILLE MANUFACTURING COMPANY AND SOMERSET MANUFACTURING COMPANY, RESPONDENTS

And afterwards, to wit, the 17th day of March 1938, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Joseph Buffington and Honorable John Biggs, Jr., Circuit Judges, and Honorable Oliver B. Dickinson, District Judge, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 28th day of July 1938, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

No. 6490. March Term, 1938

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

BENJAMIN FAINBLATT AND MARJORIE FAINBLATT, INDIVIDUALS, DOING
BUSINESS UNDER THE FIRM NAMES AND STYLES OF SOMERVILLE MAN-
UFACTURING COMPANY AND SOMERSET MANUFACTURING COMPANY,
RESPONDENTS

On Petition for the Enforcement of an Order of the National Labor
Relations Board

Opinion

Filed July 28, 1938

Before BUFFINGTON and BIGGS, Circuit Judges, and DICKINSON,
District Judge

BUFFINGTON, J.

In this case—a petition by the National Labor Relations Board to enforce an order to cease and desist—the initial and decisive question involved is whether under the proofs in the case the respondents are engaged in interstate commerce.

In that regard the Intermediate Report (Record page 461) states: "The business of respondents is clearly of an interstate nature." If this statement is correct, the order should be enforced. On the other hand, if the Board has not shown that "the business of the respondents is clearly of an interstate nature" this Court should decline to enforce the proposed order.

Addressing ourselves to that controverted question, the proofs show that Benjamin Fainblatt, a respondent, is the sole owner of a small garment manufacturing plant in the village of Somerville, New Jersey, employing at times sixty persons, according to the manufacturing orders he receives from a partnership in New York called Lee Sportswear Company, which was composed of his sons, and which was engaged in marketing women's sports garments. Their father had no interest in the partnership, and the sons had no interest in the plant or business of their father. The New York Lee Sportswear Company, hereafter called Lee Company, as their business required, owned all the tailoring material here involved. Such material from time to time was cut in New York by Lee Company and shipped in trucks employed by it to respondent's factory—hereafter called Somerville. At times, in order to avoid delay, Lee Company's material was shipped direct from mills to Somerville. All shipments were there cut, tailored, pressed by Somerville, and delivered to the trucks employed by Lee Company for delivery either to the New York partnership or its customers as directed by it. To that end Lee Company kept a representative in the factory. The material was owned by Lee Company and respondent had no control

ownership, or interest in the material sent by Lee Company or in the tailored article. He was paid for the tailoring work he did, no one but himself was interested in his factory and the profits arising therefrom were included in his personal income tax return. From the testimony produced by the Board, these facts are shown.

Bearing on the fact that respondent had no interest in the Lee Company, respondent's uncontroverted testimony was:

"Q. And you are not financially interested in that company?

A. No, sir.

Q. Is that a corporation?

A. No, sir.

Q. That, too, is just a business operating under a trade name?

A. A partnership.

Q. I see. You have no financial interest in it?

A. No, sir.

Q. Were you ever associated with that company?

A. No, sir."

As to Lee Company paying no bills for or at Somerville, the proof is:

"Q. Well, does the Lee Sportswear Company pay any of the bills of the Somerville Company?

A. No.

Q. Not at all?

A. No, no.

Q. Did it ever pay for the installation of any of your machinery?

A. No, sir.

Q. Or repairs to your machinery?

A. No."

That respondent's work was simply tailoring and cutting, the proof is:

"Q. But what you are actually engaged in here is the tailoring?

A. Tailoring and cutting.

Q. Which is the substantial operation in your plant?

A. Tailoring.

Q. You went into that business with your own capital?

A. Yes.

Q. You assumed all financial obligations and responsibilities in running this business in Somerville?

A. Yes.

Q. And that is solely a manufacturing business?

A. Yes."

That the profits from his plant are reported by respondent and that the Lee Company had no share therein is shown in the Record, page 113:

"Q. Do you file a personal income tax return?

A. Yes.

Q. Do you include in that personal income tax return your income from manufacturing here?

A. Yes.

Q. And does the Lee Sportswear, to your knowledge, include in their income tax return any income from the Somerville Manufacturing Company?

A. They haven't got no income from the Somerville Manufacturing Company."

Recognizing these proofs by the witness produced by itself, the Labor Board, in its Intermediate report, says:

"Mr. Fainblatt testified that he is the sole owner of the two companies, and that he has no financial interest in the Lee Sportswear Co."

Moreover, in its report, the Labor Board states: "All of the raw material converted into garments by respondents are owned by the Lee Sportswear Co." As to the operations generally, the Labor Board states:

"All of the raw material, converted into garments by respondents, are owned by the Lee Sportswear Co. Although the proportion varies from time to time, it is customary for the Lee Sportswear Co. to furnish the material already cut and ready for the operators to sew. If the Lee Sportswear Co. is very busy, material is sent to the respondents for cutting. Sometimes, however, the material is shipped directly from the mills to respondents in Somerville, where it is cut. Respondents receive extra compensation for the cutting, whether the uncut material comes from the mills or from Lee Sportswear Co. Some of the mills from which respondents receive these shipments are located outside the State of New Jersey. During recent months most of the material has been cut when received by respondents. After the garments are made up they are shipped back to the Lee Sportswear Co. in New York City, although some of them are turned over to a representative of that company stationed at the Somerville plant, who may ship them directly to customers. Most of the raw materials and finished garments are handled by an expressman or trucking concern, Sissler Brothers, of Somerville, N. J. Lee Sportswear Co. pays the trucking charges. In general no stock of raw materials is maintained at the Somerville plant, although there are times when there is more work on hand than at others.

The garments as finished by respondents do not carry any label. Sol Fainblatt, Benjamin Fainblatt's son, is employed by and acts as the Somerville agent of the Lee Sportswear Co. He goes to New York City each morning as a part of his work, gets his orders, returns to Somerville, N. J., about two o'clock in the afternoon, and ships his goods out. The goods that he ships are those turned over to him by respondents. The Lee Sportswear Co. pays in advance for the garments manufactured by respondents. This payment represents principally the labor involved in the cost of manufacture."

In the face of these proofs, given by its own witness and without any proof to the contrary, the Board (record page 470), made this contradictory and unwarranted findings:

"The respondents are doing business in Somerville, N. J., under the firm names, Somerville Manufacturing Company and Somerset Manufacturing Company, and are engaged in the manu-

of this business they have caused substantial amounts of raw material and finished goods to be purchased, transported, and sold in interstate commerce."

On the contrary, the proofs adduced by the Board show that the respondents have made no purchases of "raw material," have made no purchases of "finished product," have sold no goods or materials, and have transported nothing. That the Lee Company which is not here involved, in the purchase of its raw materials or in its sale of the tailored product, in its transportation to and fro across State lines, was engaged in interstate commerce, in no way affects the respondent, who owns no material, who is not engaged in commerce, who has no commerce to transport, who buys nothing and sells nothing, and who has no voice, power, interest, or control in or of what is done by Lee Company in bringing to or taking from his factory its own merchandise. That such an one and his local plant can be drawn into the network of national control under the constitutional power to "regulate the commerce between the States," this court cannot hold.

So regarding, the petition of the Board is denied.

Biggs, Circuit Judge (dissenting).

There is no dispute as to the essential circumstances of the case at bar though discrepancies occur in the testimony. The question presented is really one of law. The facts may be stated briefly, as follows.

In August 1934 Benjamin Fainblatt, acting in cooperation with his daughter, Marjorie, established a business in Somerville, New Jersey, under two names procured under the Business Names Act of New Jersey.¹ One name was "Somerville Manufacturing Company"; the other was "Somerset Manufacturing Company." The two names were used interchangeably. The individuals principally concerned in the business were the respondents, Benjamin Fainblatt and Marjorie Fainblatt. The name "Somerville Manufacturing Company" was not made use of by the respondents after February 15, 1935, and following that date all business was conducted under the name "Somerset Manufacturing Company."

The business had been financed by Lee Sportswear Company, a copartnership doing business in New York City and consisting of Leo and Irving Fainblatt, sons of Benjamin Fainblatt, and Marjorie Fainblatt. Benjamin Fainblatt had been employed by this partnership immediately prior to his going into business in Somerville. The business at Somerville consisted of finishing and tailoring women's sportswear. The materials which were finished or tailored were supplied by Lee Sportswear Company and shipped to the respondents' plant at Somerville. When finished and tailored by the respondents, the finished and tailored goods were delivered by the respondents upon the premises to Sol Fainblatt, another son of Benjamin Fainblatt, acting as the representative of Lee Sportswear. Sol Fainblatt directed the disposal of the finished merchandise. Part of it, by his direction, was delivered to Lee Sportswear in New York City; the remainder was sent direct from the Somerville plant to customers of Lee Sportswear in various States. Title to the goods remained in Lee Sportswear and was never vested in the respondents.

¹C. S. 3686, Sup. 2528. Sup. 1781 (1621), p. 104.

The respondents are engaged solely in finishing the material supplied to them by Lee Sportswear. Lee Sportswear supplied unfinished material solely to the respondents. All finished material sold by Lee Sportswear was finished by the respondents. The work performed by them for Lee Sportswear was performed under contracts. The payments made under these contracts were the only source of income to the respondents' business at Somerville. As a matter of fact the records of Lee Sportswear as to unfinished goods delivered to, and finished goods received from the respondents, constitute the only production records of the Somerville business.

Somerville Manufacturing Company, Somerset Manufacturing Company employed women garment workers to finish the raw materials furnished by Lee Sportswear. These garment workers constituted the tailoring department of the respondents' business. Beginning about August 14, 1935, at the request of certain employees, attempts were made to organize the employees of the tailoring department of Somerset Manufacturing Company by Local 149 of the International Ladies' Garment Workers' Union. The tailoring department consisted of operators, floor girls, and finishers, and was an appropriate bargaining unit. A labor dispute immediately ensued. On September 6, 1935, the respondents refused to bargain collectively with the representative of the Union and a strike was precipitated by this refusal.

Between August 14 and September 18, 1935, eight girls were discharged because of their union activity or membership. It would be difficult to find testimony indicating more plainly discrimination against employees for union activity. For example, one of the discharged employees when discharged was told by her foreman: "I am sorry. You are causing too much trouble. I have no more work for you." Another was told by the foreman: "I have not any more work for you. You are causing too much trouble. If you want work go to the Union. The Union will give you work." Another employee was refused admittance to the plant by Benjamin Fainblatt himself. Fainblatt saying, "I have no work for you * * * I don't owe you anything. If you want work you can go to the Union."

Setting out more fully the testimony in this regard which I have now recapitulated briefly, the Board found that the tailoring department of the Somerset Manufacturing Company constituted an appropriate bargaining unit, that Local No. 149 had been designated by a majority of the employees in the tailoring department as their representative for collective bargaining; that the strike resulted directly from the respondents' refusal to bargain collectively and that the respondent, Benjamin Fainblatt, was guilty of discriminatory discharges and other unfair labor practices prohibited by Section 8 of the Act (29 U. S. C. A. 158). These findings of the Board are fully supported by the evidence and may not be set aside by this court. *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 91 F. (2nd) 178; affirmed, 303 U. S. 261; *National Labor Relations Board v. Washington, Virginia and Maryland Coach Co.*, 85 F. (2nd) 990, affirmed 301 U. S. 142; *National Labor Relations Board v. Associated Press*, 85 F. (2nd) 56, affirmed, 301 U. S. 103; *Jeffrey DeWitt Insulator Co. v. National Labor Relations Board*, 91 F. (2nd) 134, certiorari denied, 302 U. S. 731.

The Board also made findings in respect to the status of the respondents in interstate commerce. These contain the gist of the controversy at issue and include findings to the effect that the cut cloth processed in the respondents' plant and the finished product thus created were transported in interstate commerce and constituted a continuous flow of commerce among the States, that the volume of this flow varied directly with the volume of the respondents' output and that the acts of the respondents "... have led and tend to lead to labor disputes burdening and obstructing commerce . . . between the several States . . ." There is also a specific finding by the Board as to the diminution of the number of finished garments shipped from the respondent's plant during the period of the strike.²

Upon June 3, 1936, the Board entered an order to the effect that Benjamin Fainblatt and Marjorie Fainblatt, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, should cease and desist from 1 (a), interfering with, restraining or coercing their employees in the exercise of the right to join and assist the International Ladies' Garment Workers' Union or any other labor organization, (b), from discouraging membership in the Union referred to, or any other labor organization, by discharging, refusing to reinstate or otherwise discriminating in regard to tenure or terms of employment in respect to employees who have joined or assisted the Union or any other labor organization, (c), from refusing to bargain collectively with the Union as the exclusive representative of the employees in the tailoring department of the Somerset Manufacturing Company; and 2 (a), should bargain collectively with the Union as the exclusive representative of the employees of the tailoring department in respect to rates of pay, wages, hours and other conditions of employment, (b), should offer to the eight discharged employees immediate and full reinstatement to their former positions without prejudice, (c), should offer employment to all employees of the tailoring department who went on strike, subject to certain specified conditions, (d), should make whole the eight discharged employees for any loss of pay, and (e), should post notices in conspicuous places in the plant to the effect that the respondents would cease and desist from the practices condemned by the National Labor Relations Act.

Upon June 19, 1937, the respondents not complying with the order, the Board filed a petition in this court to the end that the order might be enforced. The respondents having refused to take testimony at the time of the original hearings because they deemed the Act to be unconstitutional, then petitioned this court to the end that supplementary hearings should be held to give them an opportunity to introduce testimony upon their own behalf. This court ordered such

² Between September 1 and 17, 1934, approximately 1065 dozen finished garments were shipped from the respondent's plant. From November 18 to 30, 1934, approximately 967 dozen garments were shipped. Though the record is incomplete as to the shipments in October, 1934, it is clear that at least 1011 dozen were shipped. The shipments from September 1 to 17, 1935, totaled approximately 857 dozen. The strike in this case began September 18, 1935. The shipments from September 18 to 30, 1935, totaled approximately 373 dozen. In October, 1935, the record reveals that there were at least 680 dozen shipped, although there may have been more. Thus, while in September, 1935, before the strike, the plant's output was about 80 per cent of the figure for the same period in 1934; after the strike its output dropped to less than 38 per cent of that during the same period in 1934. Though the record is not clear, it seems probable that the former level of production was not regained during October.

hearings and after they were completed the Board filed a further decision and order. In this decision, the Board found that Benjamin Fainblatt was the real owner of the business and that Marjorie Fainblatt was merely a record owner. It also found that the number of permanent employees of the plant had increased between the time of the original and supplementary hearings from fifty-nine to approximately two hundred, and that it had before it no sufficient evidence as to the membership of the Union. In view of these circumstances the Board amended its original order by striking out that portion of it requiring the respondents to bargain collectively, viz. 1 (c) and 2 (a), supra. The supplemental order reiterated all other provisions of the original order. Such was the state of the record at the time of the hearing before us.

The majority opinion of the court poses and answers one question: Is the business of the respondents interstate in character? The answer is given in the negative. I think the question should be framed otherwise, as follows: Are the operations of the respondents a part of a continuous flow of commerce between the States and have the acts of the respondents complained of led and do they tend to lead to a labor dispute burdening and obstructing commerce and the free flow of goods in commerce between the States? I think that the answer to this question must be in the affirmative and for that reason I dissent respectfully from the majority view.

Material shipped through interstate commerce comes into the respondents' plant at Somerville, is there turned into a finished product and goes out again into the currents of interstate commerce. Can the work performed by the respondents' employees be isolated from the stream of commerce whence the unfinished material comes and into which the completed product goes? Can the stream of commerce be impounded temporarily so that for the time being, it loses its identity and force and ceases to exist as part of the current between the States?

If the flow of commerce may be so impounded, I see no reason why the interruption may not be created by the devices employed in the case at bar; namely, manufacture on contract, retention of title by him who supplies the raw material and sells the finished goods, and an arbitrary separation of the manufacturing unit from the supply unit and the marketing unit. If the authority of Congress over the flow of commerce between the States may be circumvented by the device of passing raw material through one door of a manufacturing plant and withdrawing the completed product through another, the express purpose of the National Labor Relations Act, the protection of commerce from the burden of labor disputes, is frustrated. I believe that such is not the law.

The work performed by the respondents and their employees had a direct causal relationship to the flow of interstate commerce. The labor practices of the respondents precipitated a strike which was the proximate cause of a diminution in interstate commerce. The flow of commerce was thereby obstructed and burdened. In my opinion, such is the test.

The decision of the Supreme Court in *National Labor Relations Board v. Friedman-Harry Marks Clothing Co.*, 301 U. S. 58, may

be distinguished from the case at bar only upon the ground that the Clothing Company was not a "contract" manufacturer, that it procured its own raw materials and itself sold its finished products in interstate commerce. For the reasons heretofore given such a distinction seems to me to have little weight. The Clothing Company Case in reality turns upon the existence of obstruction to commerce or the free flow of commerce, a burden affecting commerce, as in the case at bar. As was stated by the Chief Justice in the case of National Labor Relations Board v. Jones and Laughlin Steel Corporation, 301 U. S. 1, 31, 32, "It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the congressional power. . . . It is the effect upon commerce, not the source of the injury, which is the criterion."

Nor do I think the case at bar can turn upon the comparatively small size of the respondents' business. The mere size of the operation by which goods are put into interstate commerce does not supply the test. National Labor Relations Board v. Bell Oil and Gas Co., 91 F. (2nd) 509; Renown Stove Co. v. National Labor Relations Board, 90 F. (2nd) 1017.

In my opinion the order of the Board should be enforced.

A true Copy:

Teste:

*Clerk of the United States Circuit Court of
Appeals for the Third Circuit.*

In the United States Circuit Court of Appeals for the Third Circuit

No. 6490. March Term, 1938

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

BENJAMIN FAINBLATT, ET AL., ETC., RESPONDENTS

Appeal from the National Labor Relations Board

This cause came on to be heard on the transcript of record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the petition to enforce the order of the National Labor Relations Board in this cause be, and the same is hereby denied.

Philadelphia, July 28, 1938.

Per Curiam.

BUFFINGTON, *Circuit Judge.*

Order Denying Petition to Enforce Order of National Labor Relations Board. Received & Filed July 28, 1938. Wm. P. Rowland, Clerk.

In the United States Circuit Court of Appeals for the Third Circuit

No. 6490. October Term, 1937

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

BENJAMIN FAINBLATT, ET AL., ETC., RESPONDENTS

Sur petition for rehearing

And now, to wit, September 8, 1938, after due consideration, the petition for rehearing in the above-entitled case is hereby denied.

Philadelphia, Sept. 8, 1938.

Per Curiam.

BUFFINGTON, *Circuit Judge.*

[Endorsements:] Order Denying Petition for Rehearing: Received & Filed Sept. 8, 1938. Wm. P. Rowland, Clerk.

UNITED STATES OF AMERICA,

Eastern District of Pennsylvania,

Third Judicial Circuit, Sect.:

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, DO HEREBY CERTIFY the foregoing to be a true and faithful copy of the original Transcript of Record, Volume I, in the case of National Labor Relations Board, Petitioner, vs. Benjamin Fainblatt, et al., individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, Respondents. No. 6490 on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 21st day of November, in the year of our Lord one thousand nine hundred and thirty-eight, and of the Independence of the United States the one hundred and sixty-third.

[SEAL]

WM. P. ROWLAND,

Clerk of the U. S. Circuit Court of Appeals,

Third Circuit.

Supreme Court of the United States

Order allowing certiorari

Filed January 9, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.



VOL. II
TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 514

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

**BENJAMIN FAINBLATT AND MARJORIE FAINBLATT,
INDIVIDUALS, DOING BUSINESS UNDER THE FIRM
NAMES AND STYLES OF SOMERVILLE MANUFACTUR-
ING COMPANY AND SOMERSET MANUFACTURING
COMPANY**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT**

PETITION FOR CERTIORARI FILED DECEMBER 8, 1938

CERTIORARI GRANTED JANUARY 9, 1939

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 514

NATIONAL LABOR RELATIONS BOARD. PETITIONER

vs.

BENJAMIN FAINBLATT AND MARJORIE FAINBLATT,
INDIVIDUALS, DOING BUSINESS UNDER THE FIRM
NAMES AND STYLES OF SOMERVILLE MANUFACTUR-
ING COMPANY AND SOMERSET MANUFACTURING
COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT

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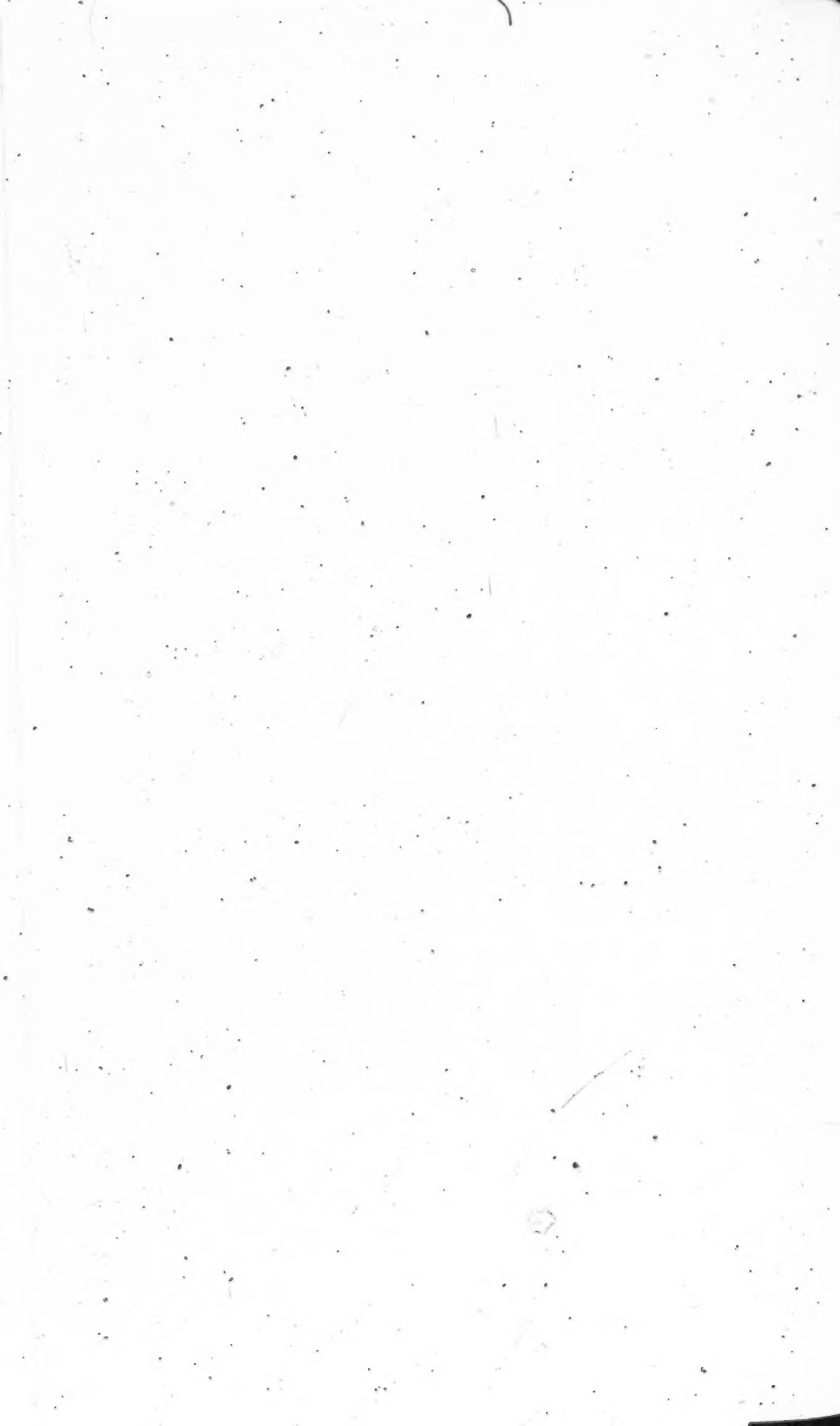
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RECORD

IN THE
UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

BENJAMIN FAINBLATT and MARJORIE
FAINBLATT, individuals, doing business under the
firm names and styles of SOMERVILLE MANU-
FACTURING COMPANY and SOMERSET MAN-
UFACTURING COMPANY.

Respondents.

October Term, 1937.

**PETITION BY RESPONDENTS FOR PERMIS-
SION TO ADDUCE ADDITIONAL EVIDENCE**

*To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Third Circuit:*

Benjamin Fainblatt, formerly trading as Somer-
ville Manufacturing Company, and Margorie Fain-
blatt, formerly trading as Somerset Manufacturing

Company, respondents in the above entitled cause, pursuant to the privilege extended to them by the provisions of an Act of Congress approved July 5, 1935, (Public No. 198, 74th Congress, 49 Stat. 449, C. 372, 20 U. S. C. A. Section 151 et seq.), respectfully petition this Honorable Court for leave to adduce evidence in support of their defense against the charges made and filed against them by the National Labor Relations Board in certain proceedings known upon the records of the National Labor Relations Board as Case Number C-53, the title thereof being "In the Matter of Benjamin Fainblatt and Margorie Fainblatt, individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company and International Ladies Garment Workers' Union, Local No. 149."

In support of this petition, the respondents respectfully show:

1. On or about the 29th day of January, 1936, the National Labor Relations Board issued its complaint against Benjamin Fainblatt and Marjorie Fainblatt, individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, respondents herein, charging that the respondents had engaged in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, which said complaint, together with a notice of hearing thereon, was, on the 28th day of January, 1936, served upon the respondents. Thereafter on the 4th day of February, 1936, the respondents duly filed their answer.

*Petition to Adduce Additional
Evidence*

3

2. Thereafter on the 14th day of February, 1936, the Board made an Order designating Robert M. Gates as Trial Examiner.

3. Thereafter on the 17th, 18th, and 19th days of February, 1936, the Board, by said Trial Examiner, held hearings upon the charges stated in the complaint. At said hearings, the respondents appeared specially and moved to dismiss the complaint by filing with the Board their motion in writing, a copy of which motion is hereto annexed and marked Schedule "A." The motion was denied and thereafter the hearing was continued at the instance of the Board. During the hearing, counsel for the Board moved to amend the complaint to conform the pleadings to the proof by adding an additional name in the complaint as a complaining witness, namely, a witness, Theresa Yemma, and having her testimony incorporated in the complaint as part of the allegations contained therein. Counsel for the respondents objected to the motion of the Board's counsel contending that the adding of an additional name to the complaint was, in effect, making an additional charge to which counsel pleaded surprise and informed the Board Examiner that he was unprepared to defend against the additional charge. The motion was granted over the objection of respondents' counsel and the complaint upon which the proceedings were predicated was changed to conform with the testimony of Theresa Yemma. Thereafter the respondents called no witnesses and introduced no evidence.

4. Thereafter and on the 3rd day of June, 1936,

*Petition to Adduce Additional
Evidence*

the Board stated its findings and issued and entered the following Order directed to respondents:

"Order

On the basis of the foregoing findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Benjamin Fainblatt and Margorie Fainblatt, individuals doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, shall:

1. Cease and desist from:

(a) In any manner interfering with, restraining, or coercing their employees in the exercise of their right to join and assist Local No. 149 of the International Ladies Garment Workers' Union or any other labor organization;

(b). Discouraging membership in Local No. 149 of the International Ladies' Garment Workers' Union or in any other labor organization of their employees by discharging, refusing to reinstate, or otherwise discriminating in regard to tenure or terms of employment against employees who have joined or assisted Local No. 149 or any other labor organization of their employees;

(c) Refusing to bargain collectively with Local No. 149 of the International Ladies' Garment Workers' Union as the exclusive represen-

tative of the employees in the tailoring department of the Somerset Manufacturing Company

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Local No. 149 of the International Ladies' Garment Workers' Union as the exclusive representative of its employees in the tailoring department in respect to rates of pay, wages, hours of employment and other conditions of employment.

(b) Offer to Elizabeth Schoka, Lorraine Heitz, Ethel Rice, Angelina Matteis, Mary Gecik, Fay Katz, Anna Santoro and Theresa Yemma immediate and full reinstatement to their former positions without prejudice to any rights and privileges previously enjoyed.

(c) Offer employment to all employees of the tailoring department who went on strike on September 18, 1935 or within one week thereafter where positions held by such employees on September 18, 1935 are now held by persons who were not employees of the respondents on September 18, 1935, but were employed subsequently thereto, and place all other employees who struck on September 18, 1935 or within the following week on a preferential list to be offered employment according to their seniority in respondents' employment, as and when their labor is needed.

(d) Make whole said Elizabeth Schoka, Lorraine Heitz, Ethel Rice, Angelina Matteis,

*Petition to Adduce Additional
Evidence*

Mary Gecik, Fay Katz, Anna Santoro and Theresa Yemma for any loss of pay they have suffered by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which she would normally have earned as wages during the period from the date of her discharge to the date of such offer of reinstatement, less earnings from other employment during such period.

(e) Post notices in conspicuous places in the plant stating (1) that the respondents will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of thirty (30) consecutive days.

5. The Board now comes before this Honorable Court and prays for a decree enforcing in whole said order of the Board and requiring respondents to comply therewith.

6. Your petitioners, the respondents, assign the following as their reasons for their failure to call any witnesses and introduce testimony:

(a) That the case at Bar arises out of one of the earlier complaints filed by the National Labor Relations Board immediately following the passage of the Act;

(b) That on the 17th, 18th and 19th days of February, 1936, the respondents were of the firm belief that the National Labor Relations Act was contrary to the Constitution of the United States of America and that it deprived respondents of their freedom of contract and property without due process of law.

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(c) The respondents were also of the belief and opinion that the Act, if Constitutional, did not apply to respondents who were, at the most, engaged solely in manufacturing wearing apparel in Somerville, New Jersey. The respondents did not engage in buying or selling either the raw materials or finished garments.

(d) The respondents, by reason of their beliefs as set forth in the next two preceding paragraphs, did not call any witnesses and introduced no testimony; and this Honorable Court is asked to decree the enforcement of an Order based on the record of a hearing at which only one side of the issue was presented.

7. Your petitioners affirmatively show:

(a) That the record of the Clerk of the County of Somerset and the State of New Jersey, and the records of the Office of the Secretary of State for New Jersey, truly show that Benjamin Fainblatt was the sole individual doing business as the Somerville Manufacturing Company; that Margorie Fainblatt was the sole individual doing business as the Somerset Manufacturing Company;

(b) Those persons named in the Board's complaint as employees of the respondent, Benjamin Fainblatt, immediately before the strike were not employed by the respondent, Benjamin Fainblatt, immediately before the strike, during the strike, or after the strike, but, on the contrary, respondent, Benjamin Fainblatt, discontinued his operations as the Somerville Manufacturing Company on or about February 15, 1935, and continued at the plant in Somerville, New Jersey, as an employee of Mar-

*Petition to Adduce Additional
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gorie Fainblatt, trading as the Somerset Manufacturing Company; that the sole employer of the persons named in the Board's complaint was Margorie Fainblatt, and that the respondent, Benjamin Fainblatt, is not a proper or necessary party in the above entitled cause;

(c) That on or about the 2nd day of January, 1937, Margorie Fainblatt, the registered owner of the Somerset Manufacturing Company, sold and conveyed the business of the Somerset Manufacturing Company to Benjamin Fainblatt, who, from the 2nd day of January, 1937, to the day and date of this petition has been conducting the business of the Somerset Manufacturing Company; that since the order of the board on the 3rd day of June, 1936, conditions at the plant have been peaceful and production has been unimpeded and unhampered; that the number of employees has increased from approximately fifty-eight, which number allegedly were employed in the last week of August, 1935, as shown by the evidence presented at the hearing before the Board, to an approximate average number of two hundred employees for the year 1937 to date.

(d) Your petitioners further show that no election has ever been held at the plant premises for the purpose of having the employees select their representative and that this Honorable Court is asked to enforce the Order of the Board which will affect the welfare of approximately one hundred and fifty employees who had no opportunity to express their will with respect to selecting a representative.

(e) Your petitioners further show that since the

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order of the Board on the 3rd day of June, 1936, attempts have been made to settle any and all differences between the International Ladies Garment Workers' Union, Local No. 149, and such attempts have been futile in that the International Ladies Garment Workers' Union, Local No. 149, through its representative, Harry Posner, has steadfastly refused to consider any bargaining unless the respondents, or either of them, would, in the first instance, enter into a contract requiring all employees at the Somerset Manufacturing Company plant to be members of the said Union. Your petitioners further allege that they are reliably informed by their counsel that the International Ladies Garment Workers' Union, Local No. 149, would take steps to have the instant case discontinued by the National Labor Relations Board if the Somerset Manufacturing Company would enter into a "Closed Shop" agreement with the said Union.

(f) Your petitioners further show that since the strike in question on the 18th day of September, 1935, a number of those persons involved in the alleged dispute have returned to their work at the Somerset Manufacturing Company.

8. The respondents verily believe that they can, by proper evidence, support the allegations, matters and things set forth and that such evidence is material to reaching a fair conclusion on the issue involved.

WHEREFORE, The respondents pray this Honorable Court that it decree and order the National Labor Relations Board to permit the respondents

*Petition to Adduce Additional
Evidence; Schedule "A"*

further hearing in the proceedings in the case at Bar known upon the record of the National Labor Relations Board as Case Number C-53.

LEON GEROFISKY,
Attorney for Respondents.

T. GIRARD WHARTON,
Associate Counsel.

JOSEPH HALPERN,
Associate Counsel.

Dated at Somerville, New Jersey, this 2nd day of October, 1937.

Schedule "A"

MOTION

Now comes Benjamin Fainblatt and Marjorie Fainblatt, individually and doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, the respondents in the above cause, appearing specially by their attorney, Leon Gerofsky, Esquire, and move the National Labor Relations Board to dismiss the Complaint in this suit, for it appears that:

1. The Sections 8, 9, and 10 of the National Labor Relations Act constitute an arbitrary and unreasonable interference with the contractual relationships between Respondents and their employees, all of which cause the National Labor Relations Act to be illegal.

2. Section 7 of the National Labor Relations Act is illegal. The National Labor Relations Act is contrary to the Constitution of the United States of America in that it deprives the respondents of freedom of contract and of property without due process of law.

3. The National Labor Relations Board, having taken an active part in the institution of the proceedings, in that it has issued the complaint against the respondents, is disqualified from exercising a judicial function and from hearing the proceedings.

WHEREFORE respondents pray that:

1. The complaint be dismissed.

Leon Gerofsky,
Attorney for Benjamin
Fainblatt and Margorie
Fainblatt, individuals, do-
ing business under the firm
names and styles of Somer-
ville Manufacturing Com-
pany and Somerset Manu-
facturing Company.

State of New Jersey,
County of Somerset, ss:

MARGORIE FAINBLATT, being first duly sworn according to law upon her oath deposes and says that she is one of the petitioners in the foregoing petition named; that she has read the foregoing petition and has knowledge of the contents

*Petition to Adduce Additional
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thereof; and she further states that the statements made in the foregoing petition are true to the best of her knowledge and belief.

MARGÖRIE FAINBLATT, .

Sworn and subscribed to before me this 2nd day of October, 1937.

.....
A Master in Chancery of
New Jersey.

(Seal)

ORDER

This matter being opened to the Court by Leon Gerofsky, attorney for the respondents, Benjamin Fainblatt and Margorie Fainblatt, individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, in the presence of Philip Levy, attorney for the petitioner, National Labor Relations Board, and it appearing that the respondents, Benjamin Fainblatt and Margorie Fainblatt, have filed a petition with this Court for leave to adduce further testimony and evidence before the National Labor Relations Board in the proceedings in the above entitled cause, known upon the record of the National Labor Relations Board as Case No. C-53, all in pursuance to the terms of Section 10 (e) of an Act of Congress approved July 5, 1935, (Public No. 198, 74th Congress, 49 Stat. 449, C. 372, 20 U. S. C. A. Section 151 et seq.); and the Court having heard the arguments of counsel and having considered the verified petition and answer thereto and being satisfied that additional evidence to be adduced by the respondents is material and that there were reasonable grounds for their failure to adduce such evidence in the hearing heretofore held before the National Labor Relations Board.

It is on this 15th day of October, 1937, ORDERED that the National Labor Relations Board permit the respondents, Benjamin Fainblatt and Margorie Fainblatt, individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing

Company, a further hearing within one week from the date hereof; and

It is further ORDERED that such additional evidence adduced by the respondents at such hearing shall be taken before the National Labor Relations Board, its member, agent or agency, together with any findings thereon, and be made a part of the transcript of the record in the above entitled cause; and

It is further ORDERED that the proceedings in the above entitled cause before this Court be stayed until the order of this Court is complied with.

BY THE COURT

NOTICE OF HEARING

A decision having been issued in the above matter by the Board, and a petition for enforcement having been duly filed in the United States Circuit Court of Appeals for the Third Circuit, and thereafter the respondent having filed a petition for leave to adduce additional evidence, and the Court having granted said petition on October 11, 1937,

PLEASE TAKE NOTICE that on the 22nd day of October, 1937 at 10 o'clock in the forenoon, in Room 942, Woolworth Building, 233 Broadway, New York, New York, a hearing will be conducted pursuant to the above direction of the Court, before the National Labor Relations Board by a trial examiner to be designated in accordance with its Rules

Notice of Hearing

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and Regulations—Series 1, as amended, Article IV, Section 2 and Article II, Section 23.

You may appear and be heard if you so desire.

By direction of the Board:

BENEDICT WOLF,

(Seal)

Secretary.

Dated this 15th day of October, 1937.

AFFIDAVIT AS TO SERVICE

District Of Columbia, ss:

I, Bertram Katz, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 15th day of October, 1937, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Notice of Hearing to the following named persons, addressed to them at the following addresses:

Leon Gerofsky, Esq.

Central Building

Somerville, N. J.

Alexander Feller, Esq.

41-43 Paterson Street

New Brunswick, N. J.

BERTRAM KATZ.

Subscribed and sworn to before me this 15th day of October, 1937.

Harold Wilson.

(Seal)

Certificate**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

I, Benedict Wolf, Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of:

Order Designating Trial Examiner, In the Matter of Benjamin Fainblatt and Marjorie Fainblatt, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company and International Ladies' Garment Workers Union, Local No. 149, Case C-53

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 20th day of October A. D. 1937, at Washington, D. C.

BENEDICT WOLF,
Secretary.

(Seal)

ORDER DESIGNATING TRIAL EXAMINER

IT IS HEREBY ORDERED that ROBERT M. GATES act as Trial Examiner in the further hearing in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1, as amended, of the National Labor Relations Board.

Dated, Washington, D. C., October 20, 1937.

By direction of the Board:

BENEDICT WOLF,

(Seal)

Secretary.

Stamp Received: Oct. 21,
1937, Regional Office, Dis-
trict 2

HEARING

Room 942,
233 Broadway,
New York, N. Y.
Friday, October 22, 1937

The above entitled matter came on for hearing,
pursuant to notice, at 10:00 o'clock a. m.

Before:

ROBERT M. GATES, Trial Examiner.
DAVID A. MOSCOVITZ, Esq., Attorney on
behalf of the Board.

LEON GEROFISKY, Esq., (Central Bldg.,
Somerville, N. J.)

JOSEPH HALPERN, Esq., and T. GIR-
ARD WHARTON, on behalf of the Respond-
ents.

PROCEEDINGS

TRIAL EXAMINER GATES:

You may proceed.

MR. MOSCOVITZ:

I assume that Mr. Gerofsky has an opening
statement to make, because this case comes be-
fore you by order of the Third Circuit Court
of Appeals on a petition by the Respondents
for permission to adduce additional evidence,
but before Mr. Gerofsky proceeds, I would like
to make part of the record here, the order of
the Board designating the Trial Examiner to

hear this proceeding, and the Notice of Hearing, as well as the affidavit of service.

MR. GEROFISKY:

I have no objection to the designation.

TRIAL EXAMINER GATES:

That may be marked Board's exhibit No. 1.

(Thereupon the document above referred to was received in evidence and marked Board's Exhibit No. 1 as of October 22, 1937.)

MR. GEROFISKY:

And I have no objection to the Notice of Hearing offered.

TRIAL EXAMINER GATES:

That may be marked Board's exhibit No. 2.

(Thereupon the document above referred to was received in evidence and marked Board's Exhibit No. 2, as of October 22, 1937.)

MR. MOSCOVITZ:

So there won't be any confusion in the markings of this proceeding and proceedings which have already been heard, could this be Board's exhibit No. 1 with today's date and this Board's exhibit No. 2 of today's date.

TRIAL EXAMINER GATES:

Yes, they may be marked that way.

MR. MOSCOVITZ:

Then, I would like to make part of the record the Respondents' petition for permission to adduce additional evidence, so the Board may have before it the papers in the Third Circuit Court of Appeals.

TRIAL EXAMINER GATES:

Is there any objection?

MR. HALPERN:

Is it the intention of making it part of the record by typing it into the record?

MR. MOSCOVITZ:

No, just an exhibit.

MR. GEROFISKY:

Don't you have the original there?

MR. MOSCOVITZ:

I have the original, but I thought we could agree it was a copy, and let it become an exhibit.

MR. GEROFISKY:

Of course, the original at any rate is in the docket with the Circuit Court.

MR. MOSCOVITZ:

I have the original. When I say that copy was served on the Board by Mr. Gerofsky, this copy is a true copy. I think there is no question about that, is there Mr. Gerofsky?

MR. GEROFISKY:

That is right.

MR. MOSCOVITZ:

I offer this as No. 3.

TRIAL EXAMINER GATES:

Any objection?

MR. GEROFISKY:

No.

TRIAL EXAMINER GATES:

It may be admitted.

(Thereupon the document above referred to was received in evidence and marked Board's Exhibit No. 3 as of October 22, 1937.)

MR. MOSCOVITZ:

Finally, I offer the order of the Court which

has no signature, but it is a true copy. I think, we can agree?

MR. GEROFKY:

The body of the order is a true copy. There is no signature on that order. At any rate, the original order is on file with the other proceedings at the Circuit Court in Philadelphia.

MR. MOSCOVITZ:

I offer it as Board's exhibit No. 4 of today's date.

TRIAL EXAMINER GATES:

If no objection, it may be admitted.

MR. GEROFKY:

No objection.

TRIAL EXAMINER GATES:

It may be admitted.

(Thereupon the document above referred to was received in evidence and marked Board's Exhibit No. 4 as of October 22, 1937.)

MR. MOSCOVITZ:

Before Mr. Gerofsky proceeds now, I want to enter my objection in the record to the proceeding at this time, on the ground that the petition to adduce evidence should not have been allowed by the Third Circuit Court of Appeals, and that it erred in ordering the proceeding at this time.

TRIAL EXAMINER GATES:

I have reserved decision on that objection.

MR. GEROFKY:

May I be heard with respect to the objection?

TRIAL EXAMINER GATES:

You may.

MR. GEROFISKY:

This hearing comes about through the petition which has been offered as an exhibit, which petition was filed with the Circuit Court of Appeals for the Third Circuit at Philadelphia. The hearing was had on the petition October 11th.

The Court upon hearing the argument of counsel representing the Board, counsel representing the petition, granted this hearing in accordance with the provisions of the Act, that is, the Labor Act, specifically Section 10-E of the Act.

The Court felt that there was reasonable cause for the failure on the part of the Respondents to offer testimony on the original hearing, and that there is such evidence set forth in the petition, or such allegation in the petition as to indicate to the Court's satisfaction that those allegations if proven and brought about in the way of evidence, would be very material to a just decision.

MR. HALPERN:

I would like to have one statement on the record, to the effect that Mr. Moscovitz's objection to the taking of this testimony is improper, because of the fact that this Board through the Examiner has no authority to contravene the order of the Third Circuit, where this cause at the present time is pending.

TRIAL EXAMINER GATES:

I will reserve decision on that.

You may proceed.

MR. GEROFISKY:

I will call Miss Fainblatt.

MARJORIE FAINBLATT was called as a witness by and on behalf of the Respondents, and was duly sworn.

MR. GEROFSKY:

I want to withdraw Miss Fainblatt and put another witness on out of turn.

May I state, if the Court please, with respect to objections, will it be noted that they are automatically set forth any exceptions on the rulings? Rather than call for the exception on each ruling. I thought it would save time.

MR. MOSCOVITZ:

I think it would too. If an objection is overruled, the exception is automatically saved. I agree I would like to join with Mr. Gerofsky on that.

TRIAL EXAMINER GATES:

Very well.

MR. GEROESKY:

Mr. Hawley, will you please take the stand?

WALLACE G. HAWLEY, Jr. a witness called by and on behalf of the Respondents, having been first duly sworn, was examined and testified as follows:

Direct Examination

BY MR. GEROFSKY:

Q. Mr. Hawley, where do you reside.

A. Somerville, New Jersey.

Q. How long have you lived in Somerville, New Jersey?

A. I moved there in 1913. In 1918, I left Somerville and went into service, came back in 1922 and lived there until the present time.

Q. What is your business?

A. Real Estate, Insurance, and Travel Bureau.

Q. Are you acquainted with Benjamin Fainblatt, one of the Respondents in this case?

A. I am.

Q. And how long have you known him?

A. Ever since his firm came to Somerville. We were responsible in working up the lease and leasing the property which they occupy.

Q. That was in 1934?

A. That was in 1934.

Q. August?

A. Some time the latter part of July or the first part of August. I don't recall just what date it was.

Q. Do you know Marjorie Fainblatt, another Respondent in this case?

A. I do.

Q. How long have you known her?

A. Approximately the same length of time.

Q. Do you know what business those two persons were engaged in when they first became acquainted with you about August, 1934?

A. I do.

Q. What was that business?

A. Manufacturing of women's and children's sportwear.

Q. Were, to your knowledge, both engaged in manufacturing businesses there in Somerville?

A. Yes.

Q. Where was the plant located?

A. Depot Square. It is on a little street they call Wassau Place.

Q. Now, Mr. Hawley, did you ever appear at the plant in the month of August, 1935 and speak with a group of the girls?

A. Yes, sir.

Q. Do you recall the exact date?

A. Well, it was the first part of August, the seventh or eighth or ninth. I could not tell you exactly what the date was. It was on or about that time.

Q. That was in the year 1935?

A. '35.

Q. And what was the occasion for your visit?

A. Naturally, being in the business that I happen to be in, we are interested in promoting Somerville. And I went down there to the plant and talked to the girls in the plant—oh, I don't recall exactly what I said.

Q. Now, Mr. Hawley, who called you to the plant?

A. Mr. Fainblatt.

Q. And you did, nevertheless, speak to the girls?

A. Yes, sir.

Q. Was anyone else present at that time to speak to the girls?

A. I believe, as I recall it, Freas Hess. He was the Mayor of Somerville.

Q. Is he the Mayor of Somerville today?

A. Yes, sir.

Q. And now, Mr. Hawley, at a prior hearing held in February, 1936, Marie Marano, one of the witnesses offered by the Labor Board testified as follows, with respect to what you had to say in your address to the girls.

MR. MOSCOVITZ:

What page of the record is that?

MR. GEROFISKY:

Page 171 in the transcript of record.

BY MR. GEROFISKY:

Q. A He told us to stick to our boss, because that is where our—

Withdraw that question for the moment.

Withdraw that question just for the moment.

Who addressed the girls first, you or the Mayor?

A. I was introduced by Mr. Fainblatt first.

Q. Who spoke to the girls first?

A. Mr. Fainblatt.

Q. Who spoke second?

A. I think I did.

Q. Did you stay to hear the Mayor address the girls?

A. Yes, sir.

Q. Did you hear what he had to say?

A. Yes, sir.

Q. Now, Marie Marano, one of the witnesses on behalf of the Board testified—

MR. MOSCOVITZ:

What page?

MR. GEROFISKY:

Page 171 in the record.

BY MR. GEROFISKY:

Q. That the Mayor said the following:

A. He told us to stick to our boss, because that is where our bread and butter was, and that we should have no connection with the Union. That our boss was against the Union. If we walked out on strike, we would be on relief, and it was terrible to be on relief, and he told us to bring our troubles to the boss."

She further testified immediately following:

“Q. Did he advise you to stay away from the Union?”

“A. Yes.”

Now, in hearing the Mayor address the group of girls, advise them to stay away from the Union?

A. No, sir.

Q. Did he suggest to the girls that they should have no connection with the Union?

A. No, sir.

Q. And you heard his entire statement?

A. I heard his statement, Yes, sir.

Q. Now, you addressed the group, and on page 172 of the transcript of record, Marie Marano, a Board witness, on being questioned as to what you stated had this to say:

“A. He said they weren't allowed to smoke, and one fellow got caught smoking, so this fellow got fired. So they all walked out on strike for this one fellow to get him back to work. So they were out of work so long, that when they did go back, they had to put up so much money. So it would not do any good. So he openly stated that it would not do no good to join the Union, because he had the experience, and he told us he really felt we should be glad, because he had a girl in his office that worked for him that made \$8.00 a week, using her brains.”

Did you, or did you not state to these girls that they should not, that it would do them no good to join a Union?

A. I did not.

Q. Did you tell those girls on that occasion not to join a Union?

A. No, sir.

Q. Did you at any time on that occasion prior thereto or subsequent thereto ever tell the

girls in the employ of the Somerville Manufacturing Company not to join a Union?

A. No, sir.

Q. What did you say to the girls?

A. I told them they should do as Mr. Fainblatt had said when he talked first. Any grievances within the shop should be taken up with him first, and give him an opportunity to iron any difficulties that might occur.

Q. And was that the gist of your talk to the girls?

A. The gist of my talk was to endeavor to create a thought of harmony within the plant, not so much for the benefit of the plant alone, but to keep the plant in Somerville, and give employment to Somerville people.

Q. Now, Mr. Hawley, did you of your own volition speak with any of the girls individually at about that time, August, 1935?

A. Yes.

Q. And what did you have to speak about to those girls?

A. I spoke to two or three of the girls. I can only recall one of their names, as to whether she felt that Mr. Fainblatt was being fair to her.

Q. Do you recall the name of that girl?

A. Yes, sir.

Q. What was the name?

A. Fanny Ackerman.

Q. Was she working at the plant at that time?

A. Yes, sir. As a matter of fact I was instrumental in getting her a position there.

Q. Tell me this, did she express satisfaction with her employment there?

A. Yes, sir.

Q. What did she say?

A. She said she had no reason to have any feeling against Mr. Fainblatt, that she was making good money.

Q. Did she have anything to say with respect to working conditions about the plant?

A. They were excellent.

Q. Did she say that?

A. Absolutely.

Q. And Mr. Hawley, you have had occasion to visit that plant at the time Mr. Fainblatt and Miss Fainblatt entered there to operate the business and since that time you have visited it. What have you to say with respect to working conditions about the plant?

A. I would say they were par excellent.

As a matter of fact, at the time we leased the building to Mr. Fainblatt the—

Q. You mean to the Respondents?

A. That is right. I don't know what you call it—the Labor Department, came to the building and we as renting agents went over the various alterations in order to comply with the rules and regulations covering industrial plants.

MR. MOSCOVITZ:

Before you proceed, Mr. Hawley, further, I would like, Mr. Examiner, to move that that answer be stricken. The question of working conditions, hours and wages are in no way involved in the issue before the Board.

TRIAL EXAMINER GATES:

Will you please read the answer?

(The Reporter read the witness' last answer.)

MR. MOSCOVITZ:

My motion goes to the whole answer. I did

not object to the question, but I am now moving the answer be stricken on the ground it is of no relevance, materiality, and competency to the issue before you. Else we will become involved in the issue of working conditions, hours and wages, which are not in any respect involved in this.

MR. HALPERN:

Please, your Honor, the Board in the original hearing went into it quite thoroughly as the record will disclose. And apparently they felt it material at that time, and we are endeavoring to rebut the evidence put in by the Board.

TRIAL EXAMINER GATES:

What particular evidence do you have reference to?

MR. HALPERN:

The question of various—of the testimony of various girls, regarding hours and working conditions.

MR. MOSCOVITZ:

I don't remember any questions on working conditions. Wages, Yes, because it would go to the question of relief in pay, if back pay were to be ordered.

I can't at this moment profess to recollect everything that was testified to in the original proceeding.

If Mr. Halpern tells me now that there was examination on the question of working conditions by me, of the witnesses, then, of course, in fairness to the Respondents' position here to rebut any of that testimony I will be glad to withdraw my motion.

MR. HALPERN:

That is my recollection of it.

TRIAL EXAMINER GATES:

I also have a question here, and that is to the pertinency of this particular line of examination on the reconditioning of the building.

You may proceed at this point, but it seems to me that that is so far as you can go.

BY MR. GEROFISKY:

Q. Just to go back a moment, Mr. Hawley, briefly what were the working conditions in the plant with respect to whether or not they were good or not?

A. Very good.

Q. And did you and Sheriff Adams speak to the group of girls?

A. I did.

Q. Was that the same day that you spoke?

A. No, sir.

Q. Was it before or after?

A. It was after.

Q. Now, the witness, Marie Marano, on behalf of the Board, page 173 in the transcript of record, gave the following answer with respect to a statement made by Sheriff Adams: "So Sheriff Adams told us we had a nice clean place. Said it was clean and sanitary, and he don't believe that any girl made a low pay in there."

"He said being he was looking over the payroll, he did not think so, and he told us we shall have no connection with the Union, because Mr. Fainblatt would never sign for a Union."

Did Sheriff Adams tell those girls never to join a Union?

A. Not to my recollection.

Q. If he had said it, you would have recalled it?

A. I would have probably recalled it.

MR. GEROFSKY:

I think that is all. You may cross examine.

Cross Examination

BY MR. MOSCOVOTZ:

Q. As I understand your testimony, Mr. Hawley, you were instrumental in getting Mr. Fainblatt to locate in Somerville?

A. Yes, sir.

Q. Did you work out the deal for his locating in Somerville through your office?

A. Yes, sir.

Q. When Mr. Fainblatt discussed locating in Somerville with you, did you take up with him the question of whether or not it was a good place to locate from the point of view of the labor market, the securing of labor and workers for his line of employment?

A. Yes, sir.

Q. And were you at that time fully acquainted with the labor market in that community?

A. Yes, sir.

Q. Was there any discussion between yourself and Mr. Fainblatt as to whether or not the area was an organized or unorganized area from the point of view of labor?

A. No, sir.

Q. Had you before Mr. Fainblatt discussed coming to Somerville with you ever had experience in labor matters?

A. You mean from a renting agent's standpoint?

MR. MOSCOVITZ:

I will withdraw it.

BY MR. MOSCOVITZ:

Q. Had you before Mr. Fainblatt came to Somerville ever had experience in labor union matters?

MR. GEROFISKY:

I submit, Mr. Examiner, Mr. Moscovitz should define that question, make it definite, specific. It is very broad.

MR. MOSCOVITZ:

I will be glad to.

BY MR. MOSCOVITZ:

Q. Were you ever a member of a labor organization?

A. Yes.

Q. Where?

A. New York Shipyard.

Q. And were you a member of the Union?

A. Yes, sir.

Q. What Union was that, Mr. Hawley?

A. Machinists and Mechanics Union—Machinists Union.

Q. Was that the Machinists Union that is affiliated with the American Federation of Labor?

A. I don't know. This was in 1919.

Q. Was it the International Association of Machinists?

A. Yes.

Q. And were you ever in a strike?

A. Yes, sir.

Q. Were you ever one of the strikers?

A. I don't know what you would call it. I was ordered out, that was all.

Q. As a member of the Union then you were ordered to go on strike?

A. Yes, sir.

Q. Did you go on strike?

A. Yes.

Q. And was the strike from the point of view of the workers a successful or unsuccessful one?

A. Unsuccessful.

Q. How did that affect you at that time?

A. It affected me that I went back before the strike was over.

Q. And resumed your employment?

A. Yes, sir.

Q. And did you continue in your affiliation with the Union?

A. No, sir.

Q. Did you resign?

A. Yes, sir.

Q. And you have not since that time been affiliated with any labor organization?

A. No.

Q. So that your experience with a labor union was not of the most favorable from your point of view, is that right?

A. No, sir.

Q. When you say that you were ordered out, you indicated to me that you were not at that time interested in going out, is that right?

A. We were ordered out, and I did not know what it was all about. I did not know why we were ordered out.

Q. Now, when Mr. Fainblatt located in Somerville and started operations, did he keep in touch with you from time to time as to how he was getting on?

A. Yes, sir.

Q. And did he communicate with you when he

first learned that the International Ladies' Garment Workers' Union of America was attempting to organize his plant?

A. Yes, sir.

Q. Do you recall when in relation to the day that you spoke in the plant he gave you this advice?

A. Right about that time.

Q. Did he meet with you and discuss the matter with you?

A. Yes, sir.

Q. Were there other persons with you at the time of this discussion?

A. Not at the first discussion, No.

Q. Where was the first discussion held?

A. In Mr. Fainblatt's office.

Q. And was it just between you and Mr. Fainblatt?

A. Yes, sir.

Q. Do you recall when in relation to the day that you spoke with the girls—a week, two weeks before, three days before?

A. No.

Q. You can't? All right.

A. It may have been a week, it may have been three days. I don't know.

Q. All right. It has been a long time. Can you tell me what that conversation was about?

A. Yes, sir.

Q. Will you?

A. The conversation was that a gentleman had called upon Mr. Fainblatt, and Mr. Fainblatt told me that he did not have anything against any organization, what he was interested in was keeping his plant going and keeping the girls employed.

At that time I believe, it may have been a

little after, but I believe it was at that time when an acquisition was made as to pay.

Q. Acquisition or accusation.

A. Yes.

Q. Was made as to pay?

A. And I looked over the payroll records of the plant and from time to time I looked them over, and I said, "Well, heavens, these girls are doing right well."

Q. Yes. Was that the substance of your conversation?

A. Yes, sir.

Q. Did Mr. Fainblatt tell you at that time that he was not going to let any outsider run his business?

A. I don't recall that he said that.

Q. Did you give him any advice in the method that he should invoke in dealing with the labor problem that was confronting him?

A. Only that he agreed with me that he wanted to hear what they had to say.

Q. Now, at that time, there was no strike, was there?

A. No.

Q. Nothing more than a request made by the Union for discussion on questions of recognition, hours, wages, and working conditions, is that right?

A. I don't know that.

Q. Now, did you at any other time after that, but before speaking to the girls in the plant, meet again with Mr. Fainblatt and anyone else to discuss this problem?

A. I think it was about that time when Mr. Fainblatt and Mayor Hess and Mr. Bernardsdale—

Q. Is that Ward Bernardsdale?

A. Yes.

Q. Was he a member of the Council at that time?

A. Yes, sir.

Q. Borough Council?

A. Yes. And Mr. Perry, at my suggestion—

Q. That is William Perry?

A. That is right.

Q. Also a member of the Borough Council?

A. That is right.

At my suggestion, they met with Mr. Fainblatt and looked over the payroll records, and see whether they were satisfied that Mr. Fainblatt was treating the girls properly.

Q. And was that done?

A. Yes, sir.

Q. In your presence?

A. Yes, sir.

Q. In Mr. Fainblatt's presence?

A. Yes, sir.

Q. Where?

A. At—I don't know whether that was at the Borough Hall, or whether it was at the plant. I think it was at the plant.

Q. All right. Was that the purpose of the meeting, of which you have already given?

A. Yes, sir.

Q. No other?

A. No other purpose.

Q. Any discussion about the Union?

A. No, sir.

Q. Or about the fact the Union was bringing on pressure which resulted finally in your review of Mr. Fainblatt's records?

A. As a matter of fact I reviewed Mr. Fainblatt's payroll records long before the strike, in

view of the fact that I was the insurance agent, and all compensation policies are written on an estimated payroll basis.

I had at a request of the company to see or to determine whether the estimated payroll was sufficient.

Q. Yes.

But when you fellows were all together going over Mr. Fainblatt's records, wasn't there even a suggestion among you in discussing this regarding the Union?

A. Not that I recall.

Q. Did they know why they were reviewing the records?

MR. GEROFISKY:

I object.

TRIAL EXAMINER GATES:

He may answer.

BY MR. MOSCOVITZ:

Q. You may answer it.

A. Will you say that again?

Q. Did they know why they were reviewing the records?

A. Well, due to this accusation that had come out.

Q. By whom? By the Union?

A. I don't know who brought it out.

Q. Where did you learn of the accusation?

A. I don't recall whether it was in the paper or where it was.

Q. The only question I have in mind, Mr. Hawley is this: Was this discussion one where all the cards were put on the table, and the Councilmen and the other officials knew exactly what the situ-

ation was, that the Union was coming in, that there was an attempt to organize, that this question of hours and wages had come up, or was it simply some review of the records in an academic way without the men knowing that the Union question was involved?

A. No, this was before there was any trouble.

Q. Before this strike, you mean?

A. Oh, yes.

Q. Yes, but after.

A. No, I think it was even before.

Q. Was it during the N. R. A.?

A. I don't remember the date, but it was during the time of the N. R. A.

Q. Oh, then, it was before even the Union had gotten out there to organize?

A. That is right.

Q. So your meeting with these Borough Councilmen and the others was before your meeting with Mr. Fainblatt alone that you have already told us about, is that right?

A. I don't recall, Mr. Moscovitz, just how the time was.

Q. Well, were there any other meetings between yourself and other persons regarding the Somerville Manufacturing Company, or the Somerset Manufacturing Company before you spoke to the girls in the plant, outside of the ones you have already testified to?

A. No.

Q. Who arranged in August, 1935 for you, the Mayor, to come to the shop to speak?

A. I did.

Q. Was that at Mr. Fainblatt's suggestion?

A. No, sir.

Q. You did it yourself?

A. Yes, sir.

Q. Why?

A. For the simple reason that I had heard of an organization starting in the plant, and I was interested in keeping harmony within the plant.

Q. Yes. Was that the only reason?

A. Yes, sir.

Q. Well, from whom had you heard about this organization in the plant?

A. I don't recall who told me.

Q. Well, what lead you to believe that the existence of the organization in the plant, or the coming of the organization into the plant would lead to disharmony?

A. I don't know. It was just a—I can't answer that, Dave.

Q. Was it because of the experience that you had when you were with the Shipyard people?

A. It might have been.

Q. Did you tell that to the girls?

A. I told them of an incident in the shipyards.

Q. Was it one which related to your own personal experiences?

A. Yes, sir.

Q. How did you tell it to them? Tell us what you told them.

A. I told them of a case where we were called on strike, due to an individual disregarding a rule of the yard.

That happening was, this individual was caught smoking in a tank on board a ship when it was on the ways. The individual was fired, and we were

called out on strike, not knowing what the cause for it was.

Q. Yes.

A. You have heard the rest of it.

Q. Then, that is the incident, that you have already testified to?

A. Yes.

Q. When you told them the story, what was your purpose?

A. My purpose was to try and keep harmony.

Q. Well, was it your purpose to try to keep harmony by indicating to these workers that it would be better for them, and to their best interests to remain out of the Union?

A. No. I had not had that thought.

Q. Well, then, did you tell them that they should remain in the Union?

A. I told them they should take up any grievance with Mr. Fainblatt first.

Q. Individually?

A. Yes.

Q. Did you tell them where to go if they did not secure satisfaction?

A. No, sir.

Q. Now, after you related to them an experience in labor which had been disastrous to yourself, did you then in all fairness to the whole problem relate to them an experience in labor which had been advantageous to workers, and where there have been harmonious relations?

A. No.

Q. Do you know of any?

A. I don't know. Dave

Q. All you know is the bad ones, is that right, Wally?

Now, I am just looking here through the record. Mr. Hawley, to where Mr. Fainblatt, as I recall, said that you came down to talk at his invitation.

MR. GEROFISKY:

What page?

A. I did.

BY MR. MOSCOVITZ:

Q. I understood you to testify that you went down on your own hook, and arranged this meeting.

A. You asked me prior to the first meeting whether I had been down in Mr. Fainblatt's, and I told you I had gone down there on my own volition.

Q. All right. Maybe we misunderstood each other.

Coming then only to the day when you spoke with the girls in the plant, in August, 1935, did you go there at that time at your own volition, or did you go at the invitation of Mr. Fainblatt?

A. Mr. Fainblatt.

Q. Did Mr. Fainblatt or you arrange for Freas Hess to come down?

A. I did.

Q. Was that at Mr. Fainblatt's suggestion or was it your own idea?

A. My own idea.

Q. You are sure of that?

A. Yes, sir.

Q. Now, when Mr. Fainblatt spoke first you listened to him, didn't you?

A. Yes.

Q. Then after you finished second, you listened to the Mayor make his speech, is that right?

A. I don't recall whether I came before the Mayor or the Mayor came before me.

Q. Be that as it may, you heard it, you heard the other men talk?

A. Yes.

Q. What did Mr. Fainblatt say in your best recollection?

A. In brief, the thought that he conveyed was that he wanted to treat all fair and square, and that if there was any grievances in the shop that he wanted the opportunity to talk to the girls, and iron it out.

Q. That is in sum what he said?

A. Yes.

Q. Did he say anything about the Union?

A. No, sir.

Q. You are sure of that?

A. Positive.

Q. Did he disclose to you what his purpose was in making this speech?

A. Only to make the girls feel a little more liberal toward coming to him. I would take it that way.

Q. And to create also a more lasting foundation for continued harmony?

A. That is right.

Q. That in view of the fact that there was an organizational campaign by the Union going on at that time, is that right?

A. Yes.

Q. Now, when the Mayor spoke, what did he say do you remember?

A. His talk, I would take it, was more—was based more on, here, you have got a job. You are

being paid good money, and why have any trouble, or why go on relief. He did say that.

Q. He did? So when this girl testified that the Mayor spoke about the problem of relief, she was right, wasn't she?

A. As I recall it—

MR. GEROFISKY:

My objection, Mr. Examiner, was directed with respect to that reference to the Union, alleged to have been made by Mayor Hess.

MR. MOSCOVITZ:

Yes.

BY MR. MOSCOVITZ:

Q. Now, when the Mayor on page 171 of the record is supposed to have said that the girls should stick to their boss, because it is their bread and butter, that is true, isn't it?

A. He may have used that term. I don't recall that particular term.

Q. Do you recall in substance he said that?

MR. GEROFISKY:

I will have the Mayor here in due time.

A. I would rather not say, because I don't recall that.

MR. GEROFISKY:

I will produce him.

BY MR. MOSCOVITZ:

Q. I would like to examine you on it too, Mr. Hawley. Unfortunately, Mr. Gerofsky has asked you questions about this part of the record, and I am forced to continue with it, unless the Trial Examiner says I can't.

MR. MOSCOVITZ:

May I continue, Mr. Examiner?

TRIAL EXAMINER GATES:

You may.

BY MR. MOSCOVITZ:

Q. Do you recall whether or not in substance he made that statement?

A. I don't recall, frankly.

Q. Do you recall whether or not he made any reference to the Union as such?

A. As near as I can remember at any of those talks there was never anything brought up regarding any Union affairs.

Q. Was the Union mentioned?

A. Not that I recall in any case.

Q. Was strike mentioned?

A. No, sir.

Q. Then, how was relief mentioned, the fact that these girls would go on relief, if there was no reference that they would be on strike or they would get into trouble because of the Union? They would have to get relief for some purpose. How did he bring that in, if you recall?

A. I don't recall how he brought that in.

Q. Now, about when did Sheriff Adams speak to these girls, after you spoke with them on the day after, rather, what did he say?

A. I can't recall what he said.

Q. Do you recall anything about it?

A. I remember he was there, and I was there, but what he said, I don't recall.

Q. Who got him to come down there?

A. I did.

Q. Was that at your own suggestion, or at Mr. Fainblatt's request?

A. That was at my suggestion.

Q. So when Mr. Fainblatt on page 105 of the record in this case testified that the Sheriff attended the meeting at his invitation, he was not accurate, is that true?

A. He may have done it, done the calling up, called up the Mayor, but as a matter of fact, I think he did say to me, "Will you call Bob Adams," or maybe I did, I don't recall.

Q. You are not sure just who did the calling?

A. I am not. I know I called Bob, whether Mr. Fainblatt asked me to, I don't know.

Q. That is what I wanted to know. All right. The same then would be true as to the Mayor?

A. Oh, I know that I asked the Mayor.

Q. You called him? So when Mr. Fainblatt testified on page 105 of the record that the Mayor attended at his invitation, you would say that is not accurate?

A. Understand, Mr. Moseovitz, we talked together, as I told you before. Now, if Mr. Fainblatt asked me to do it, and I asked the Mayor or asked Mr. Adams, I am answering that question. Yes, I asked him.

Mr. Fainblatt could have asked me to do it, and still he would be correct in his answer just the same as I am in mine. That I asked him. But Mr. Fainblatt asked me to do it.

Q. That is the answer. I am interested only in whether or not Mr. Fainblatt did ask you to ask them to come.

A. Yes.

Q. From his testimony I would gather that he invited them directly.

A. No.

Q. Now then, since your talk was to create harmony in the plant and to keep the plant in Somerville and give employment to Somerville people, I gather that that was the force that stimulated you in your entire interest in this matter, is that right?

A. Yes.

Q. Did you ever discuss this problem with Mr. Posner or any representative of the Union?

A. No, sir.

Q. Did you or any of the other men in Somerville who are members of the Council discuss this matter with Mr. Posner?

A. I don't know. I did not.

Q. Was it your best judgment that the best interests of this plant would be served by the elimination from the scene of this labor union?

A. I did not say that. I did not give it a thought.

Q. What?

A. I did not give the labor union a thought.

Q. Then, your references in August when you spoke to these girls about your experiences in a labor organization had nothing to do with your speaking about the union problems?

A. No, I did not give that a thought.

Q. And the fact that these speeches took place at Mr. Fainblatt's invitation, and at your own invitation at the time that the Union was organizing, had nothing to do with your thought about the union being in the plant, is that right?

A. Well, I did not know that they were organizing at first.

Q. But you did not give a thought to the Union?

A. I did not give the Union a thought at all.

Q. That had nothing to do with your speeches or the content of your speeches or the subject of your

speeches, or your operations in getting these people at the plant to discuss problems with the girls at the time the Union was organizing?

A. My main thought was harmony, keep the plant going good, and to get as many people employed as possible.

Q. Now, do you know whether or not Mr. Fainblatt's plant is organized at the present time?

A. No, sir.

Q. It is not organized?

A. I do not know.

Q. Has Mr. Fainblatt since this trouble that we referred to back in 1935 when the strike was in existence submitted his payrolls and records to you?

A. I have seen them upon many occasions.

Q. Is that for insurance purposes?

A. Yes.

MR. MOSCOVITZ:

That is all.

MR. GEROFISKY:

That is all.

(Witness Excused)

TRIAL EXAMINER GATES:

We will take a short recess at this time.

(The hearing recessed for a few minutes.)

TRIAL EXAMINER GATES:

The hearing will proceed.

MR. GEROFISKY:

I will call Miss Kelly.

WANDA KELLY was called as a witness by and on behalf of the Respondents, and having been first duly sworn, was examined and testified as follows:

Direct Examination

BY MR. GEROFISKY:

Q. What is your full name?

A. Wanda Kelly.

Q. Where do you live, Miss Kelly?

A. Manville, New Jersey.

Q. Where do you work?

A. Somerset Manufacturing Company.

Q. How long have you worked there?

A. Well, I suppose about two years.

Q. How long have you—

Withdraw the question.

Did you at any time leave the employment of the Somerset Manufacturing Company?

A. I did, during the strike.

Q. You did?

A. Yes.

Q. Did you sign a card of membership in the Union?

A. In the Union.

Q. Yes.

A. I did.

Q. How soon after the strike did you go back to work for the Somerset Manufacturing Company?

A. About eight-months, I believe.

Q. Did you voluntarily go back or were you called for?

A. Yes, I did. I went back voluntarily.

Q. And when you went back for employment, whom did you see?

A. I wrote a letter to Mr. Fainblatt, and asked him to take me back. So he told me to come the following week. So I went there, and I got the job.

Q. Did Mr. Fainblatt place any conditions upon your employment with respect to the Union membership?

A. All he said was that you could belong to any Union or organization and still you could work in the plant.

Q. Did you tell him that you had signed a card of membership to the Union?

A. Well, I don't exactly recall that. I don't recall telling him that.

Q. Did he at any time ask you to terminate any association with the International Ladies' Garment Workers' Union?

A. Well, he said he did not care whether we belonged to any union or not.

Q. Now, when you first obtained employment with Mr. Fainblatt originally before the strike, were you asked by him or any of the other supervisors whether or not you were a member of any union?

A. No, he never asked me that.

Q. Now, do you know Miss Fainblatt?

A. Yes.

Q. Did she ever place any conditions of employment upon you?

A. No.

Q. With respect to the Union?

A. No, she never did.

Q. Were you ever discharged for Union activity?

A. No, I never have.

Q. When did you sign a membership card in the Union?

A. Well, I don't really recall what date.

Q. Do you remember where it was, Miss Kelly?

A. I believe it was in Harmony Hall.

Q. Was it after you went out on strike or before?

A. Before.

Q. Was it two weeks or three weeks before you went out on strike?

A. Well, I believe it would be about three. I am not sure of that.

Q. And in that period of three weeks, to the time you signed a membership card, and the time you went out on strike, did Mr. Fainblatt, Mr. Ruby, Miss Fainblatt, or any of the other supervisors at the plant tell you that you could not belong to a Union and work there?

A. No, they never said anything about that.

Q. Did you ever pay dues in the Union?

A. No, I never paid any.

MR. GEROFISKY:

That is all.

Cross Examination

BY MR. MOSCOVITZ:

Q. When did Mr. Fainblatt tell you that you could work without belonging to any union?

A. Well, I don't exactly recall—

MR. GEROFISKY:

Wait a minute. He never told her she would work without belonging to a Union.

BY MR. MOSCOVITZ:

Q. Well, Mr. Fainblatt said according to your

testimony that you can work in his plant and still belong to any union.

A. Oh, that was at the time when I went back for my job.

Q. When you left the job?

A. After I came back. After I wrote the letter.

Q. Tell me, was it on the day when you first returned to work?

A. Yes, right before I started to work he told me that.

Q. Were you alone with Mr. Fainblatt?

A. Yes.

Q. In his office?

A. It was not exactly in the office. It was part of the factory, I think.

Q. Tell us how that conversation started, and what the conversation was.

A. Here is how it was. Mr. Fainblatt told me that I could work in the factory, and I still can belong to any Union or organization, that I would still have my job. That is all there was to it.

Q. Yes, but how did that conversation start? Who brought it up? Did you say anything before that about the Union?

A. Did I say anything? No, I have said I have not said anything.

Q. No, when you were with Mr. Fainblatt at that time, did you start the conversation about the Union or did he?

A. Well, he said I could, and I wrote him a letter before that, see, so that was really after I wrote the letter.

Q. What did you tell him in the letter, do you remember?

A. I asked him if I could have my job back.

Q. Did you tell him anything about the Union in the letter?

A. I don't exactly recall what I wrote in the letter.

Q. Did you say in the letter you were no longer interested in the Union?

A. What is that?

Q. Did you say in the letter, if you recall, that you were no longer interested in the Union, that you would not belong to the Union any more?

A. Well, I never did belong to the Union.

Q. Well, that you would not be in the Union then.

A. That's right.

Q. You told him that in the letter?

A. I could not say that. I don't recall.

Q. Why did you write the letter to Mr. Fainblatt?

A. Well, because I was working in a dress factory at Manville and I was only receiving \$9.00 there, so I thought I would go back here, would make more here.

Q. Where is that dress shop, in Manville?

A. Manville.

Q. Was that during the strike period?

A. I think it was after the strike, I believe. I don't know.

Q. Now, when you wrote to Mr. Fainblatt—now see if your recollection is refreshed—did you ask for your job back?

A. I did.

Q. And did you at the same time say anything to him in your letter about the Union?

A. I don't recall that.

Q. When you spoke with Mr. Fainblatt and he told you that you could work without—whether you

belonged to the Union or not, are you sure that he did not ask you whether or not you were still one of the Union people?

A. No, I don't think he ever asked me that.

Q. Are you sure he did not?

A. I am quite sure of it.

Q. And since then, you have not been with the Union, is that right.

A. That is right.

Q. Has the Union been to you to ask you why you have not continued with the Union?

A. No, I never have.

Q. They never have?

A. That is right.

Q. Now, Mr. Gerofsky asked you whether or not in the three week period before the strike any supervisor told you that you could not belong to the Union, do you recall?

A. No, I don't believe anybody ever said that you can't.

Q. Did any one of them ever speak with you about the Union?

A. What do you mean, in the general, at the plant?

Q. Yes, in that same period of time, either Mr. Fainblatt or Miss Fainblatt, or any of the other supervisors?

A. They never said anything personally to me.

Q. But did they ever say anything that you heard about the Union?

A. What is that?

Q. Did they ever say anything that you heard about the Union?

A. No, they never did.

Q. Never did?

A. No.

Q. Did you ever hear Mr. Fainblatt himself speak about the Union?

A. No.

Q. Did you ever hear of Mr. Hawley who was on the stand before you speak about the Union?

A. Yes, he was over there.

Q. Did you ever hear Mayor Hess speak about the Union?

A. He was there at the same time.

Q. Did you ever hear—

MR. GEROFSKY:

Just a moment. May I have the question and answer there, the last two questions and the last two answers?

(The Reporter read the last two questions and answers.)

BY MR. MOSCOVITZ:

Q. Did you ever hear Sheriff Adams speak about the Union in the plant?

A. Sheriff Adams? Well, he was there, but I never paid any attention to what he said.

Q. But you did pay attention to what the other men said, didn't you?

A. Not much.

Q. But some?

A. Well, all he said—

Q. All who said?

A. All Mr. Hawley said was that—I don't believe he said anything. Well, I don't exactly recall what he said.

Q. All right. What did Mr. Hess, the Mayor, say?

A. Well, that is so far back I can't remember.

Q. It was at the same time, though, wasn't it?

A. Yes.

Q. What did Mr. Fainblatt say at that time?

A. I can't recall.

Q. But you paid attention to them?

A. To whom?

Q. To these men when they spoke, didn't you listen to them?

A. I guess I heard it, but I probably did not pay much attention to them.

Q. Can you tell me whether or not what they said was for or against the Union?

MR. HALPERN:

I object to the question. It calls for a conclusion. Let her state what she heard, and let us draw our own conclusion.

MR. MOSCOVITZ:

The witness has testified she is unable to give us the conversation.

TRIAL EXAMINER GATES:

She may answer.

A. What was that last question?

BY MR. MOSCOVITZ:

Q. Can you tell me whether or not what these men said was in favor or against the Union?

A. Well, all Mr. Hawley said was if we have any grievances we should go to our boss, and straighten it out before we started anything else.

Q. What else did he say?

A. I guess that was all.

Q. You are sure?

A. Then he said the incident about the shipping, about him being on strike. That was about all.

Q. Anything else?

A. I don't recall anything else.

Q. That is all you remember?

A. That is right.

Q. How about the Mayor? What did he say?

A. I don't recall that either.

Q. Did he say that you girls should go out and join the Union?

A. I don't recall that.

Q. Did he tell you that you should become members of the Union?

A. I don't recall that either.

Q. But you do recall that none of the supervisors in the plant spoke with you about the Union?

A. No.

Q. You don't remember that either?

MR. GEROFKY:

She says they did not.

BY MR. MOSCOVITZ:

Q. Do you recall they did not speak with you about the Union?

A. That is right.

Q. Well, now at this time, during the period, when these men were speaking in the plant, you had already signed your card for the Union, hadn't you?

A. No, I don't think I did.

Q. Well, you signed your card in Raritan before the strike, didn't you?

A. That is right.

Q. These men spoke before you struck, didn't they?

A. Yes, they did.

Q. Now, had you already signed your card when they spoke?

A. I could not say. I don't exactly recall that.

Q. Well, was it your personal impression that

after you heard these men speak that it would be best for you not to be in the Union?

MR. HALPERN:

I object to the question, upon the grounds stated before.

TRIAL EXAMINER GATES:

She may answer it.

A. What was that?

TRIAL EXAMINER GATES:

Read the question.

(The Reporter read the question:

"Q. Well, was it your personal impression that after you heard these men speak that it would be best for you not to be in the Union?")

A. No, I don't think so.

BY MR. MOSCOVITZ:

Q. Did you have any impression after they spoke?

A. No, not much.

Q. Then you don't know anything at all about what happened, is that it?

A. About what happened when?

Q. When these men spoke?

A. I don't exactly recall everything they said.

Q. Who asked you to go up and hear the speech?

A. We were all working at that time.

Q. Was the power turned off?

A. This was at five o'clock.

Q. Was the power turned off?

A. Oh yes, of course.

Q. Do you know who turned it off?

A. No.

Q. Do you know whether or not anyone asked you to listen to the speech?

A. Well, there was Mr. Fainblatt there.

Q. Did he ask you to listen to the speech?

A. I don't exactly recall who asked.

Q. Someone did?

A. Someone may have.

Q. And do you know what the purpose of the meeting was? Did you know what the purpose of the meeting was?

A. Which meeting?

Q. Where these men spoke.

A. Well, they just came over to tell us.

Q. What?

MR. HALPERN:

If it please the Court, obviously the witness can't answer that. She can't know what the purpose these men had.

MR. MOSCOVITZ:

She just started to tell us, Mr. Halpern.

MR. HALPERN:

Which is only an inference.

A. I don't know what it was. All they did was come over and have a speech.

MR. MOSCOVITZ:

All right. That is all.

BY MR. MOSCOVITZ:

Q. Just a moment. You are sure you have told us everything that you want to say?

A. I believe I have.

Q. You are not keeping anything from us?

A. No.

Q. The whole truth?

A. That is what it is.

MR. GEROFISKY:

This witness has taken an oath, and has offered to do her best.

(Witness Excused.)

MR. GEROFKY:

I will call Miss Cicero.

FRANCES CICERO was called as a witness by and on behalf of the Respondents, and first having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. GEROFKY:

Q. What is your full name?

A. Frances Cicero.

Q. Miss Cicero, where do you live?

A. 37 Second Street, Somerville, New Jersey.

Q. How long have you lived there?

A. Well, about four years.

Q. Are you working today?

A. Yes.

Q. And where are you employed?

A. Somerset Manufacturing Company.

Q. And were you one of the girls who went out on strike?

A. Yes.

Q. When did you sign a card of membership to the Union, if you did?

A. The day I walked out on strike.

Q. That was September 18th?

A. Yes.

Q. You never signed a card before that day?

A. No.

Q. Where did you sign it, Miss Cicero?

A. At our headquarters.

Q. Is that the headquarters you maintain at Depot Square or at Harmony Hall in Raritan?

A. Depot Square.

Q. That is the first time you ever signed a membership card in the Union?

A. Yes.

Q. Now, was it before you walked out on strike or after you went out on strike that you signed it?

A. After I went out on strike.

Q. Who asked you to sign a card?

A. I don't remember the girls who asked me.

Q. Did you ever pay any dues?

A. No.

Q. Did you since that time—Withdraw that. How long were you out of work then before returning to the Somerset?

A. I don't remember.

Q. Do you remember when you went back to work?

A. It was about a year and three months.

Q. And when you went back to work, did you apply for the work, or did Mr. Fainblatt or one of the supervisors send for you?

A. I applied for work.

Q. Miss Cicero, who did you see when you went to seek employment?

A. Well, first I asked Mr. Fainblatt, and he told me to see Mr. Ruby about a job.

Q. Did Mr. Fainblatt say anything more than that?

A. No.

Q. And did you then see Mr. Ruby?

A. I did.

Q. The same day?

A. Yes.

Q. Where, at the plant?

A. At the plant, yes.

Q. And did Mr. Ruby give you employment immediately or did he tell you to come back another day?

A. I don't remember whether I worked the same day or not. But I worked—

MR. MOSCOVITZ:

What day was this?

MR. GEROFISKY:

The day she went back for employment.

A. Yes, he gave me a job the same day.

BY MR. GEROFISKY:

Q. Now, did Mr. Ruby, Mr. Fainblatt or any of the supervisors of the plant ever tell you that you could not work there if you were associated with a Union?

A. No.

Q. More specifically, the International Ladies' Garment Workers' Union?

A. They did not say anything.

Q. When you went back for your employment again, was anything said in the way of an order that you drop your affiliation with the Union?

A. No.

Q. Did you work anywhere else between the time of the strike and the time you went back for employment?

A. I did.

Q. Did you ever attend any of the meetings at Harmony Hall?

A. No.

Q. You never did?

A. No.

Q. Aside from signing the card, did you do anything else in union activities?

A. I don't remember.

Q. Did you picket?

A. Yes.

Q. Did you pay dues?

A. No.

MR. GEROFISKY:

That is all.

Cross Examination

BY MR. MOSCOVITZ:

Q. How long were you on strike before you went back to work?

A. We were on strike eight months, and then I went to work at Manville.

Q. Did you write Mr. Fainblatt and ask to go back to work?

A. No.

Q. You applied personally for the job?

A. I did.

Q. When you went out on strike, you say you picketed?

A. I did.

Q. How long did you picket?

A. Well, the eight months we were out on strike.

Q. With a sign?

A. Yes.

Q. What did you go on strike for?

A. Better wages and conditions.

Q. So you wanted to strike for that purpose, is that it?

A. I don't know.

Q. Don't be afraid to answer. I mean when you

went out and struck and were on the picket line, you said you did it for better hours and wages, you wanted to improve yourself, didn't you?

A. I did.

Q. You wanted to go out and do that, didn't you?

A. I went out on strike the following day. I did not know what a Union was.

Q. Is that what you said? You did not know what a Union was?

A. I did know what a Union was, but I did not know much about it.

Q. You did not know much about a Union when you went out?

A. No.

Q. You knew why you went out?

A. The girls told me.

Q. To try to better your condition, isn't that right?

A. It was.

Q. Now then, did you know whether or not the company was for or against the Union?

MR. HALPERN:

I object to the question. It calls for a conclusion that this witness can't possibly answer.

MR. MOSCOVITZ:

I am just asking her to answer that question: Yes or No.

MR. HALPERN:

That is just the purpose. He is asking her if she knows how the company felt about it, how could she possibly know.

TRIAL EXAMINER GATES:

She may answer it, if she knows.

A. I don't know how the company felt about it.

BY MR. MOSCOVITZ:

Q. Did you attend any of the meetings in the plant when Mr. Hawley spoke when Mayor Hess spoke, when Sheriff Adams spoke, when Mr. Fainblatt spoke?

A. I did at the first meeting, but not the second.

Q. When was the first meeting?

A. When Hawley and Mayor Hess spoke.

Q. Spoke?

A. Yes, spoke.

Q. What did the Mayor say?

A. I don't remember.

Q. Do you remember what Mr. Hawley who was on the witness stand this morning, while you were in the room here, said?

A. He was telling us about the time he was out on strike and that we should go to the boss with our troubles first.

Q. That is all he said?

A. That is all.

Q. Did he say anything about the time he was with the shipping yard?

A. He did.

Q. Did he say anything else?

A. I don't remember.

Q. Do you recall whether or not Mayor Hess said anything about relief?

A. It is so far back. I can't recall.

Q. How can you remember what Mr. Hawley said?

A. Well, he mentioned it this morning. It brought it to my mind.

Q. In other words, you are saying what you heard him say?

A. Well, it came to my mind when I heard him.

Q. Suppose I tell you that Mayor Hess told you girls not to join the Union. Does that refresh your recollection?

A. No.

Q. Suppose I told you that Mayor Hess said if you girls had anything to do with this Union, you would end up with being on relief, would that refresh your recollection?

MR. HAWLEY:

I object to the question. It is highly improper to put that type of question to the witness. He is putting words in her mouth, and getting it on the record. She says she does not remember.

TRIAL EXAMINER GATES:

She may answer it.

A. I don't remember.

BY MR. MOSCOVITZ:

Q. Did you speak with any of the bosses in the plant before you went out on strike about the Union?

A. No.

Q. Did they speak with you about the Union?

A. They did not speak about a Union.

Q. Did they speak with you about the organization of the employees?

A. Well, they did not speak to me at all.

Q. What?

A. They did not speak to me about the organization at all.

Q. Were you in a group when they spoke with the other girls, if they did?

A. Yes.

Q. Who was it that spoke?

A. Hawley, and Mayor Hess.

Q. Did they speak about the Union?

MR. GEROFISKY:

I believe the witness has already answered, your Honor, to the best of her ability here. She can't recall what Mayor Hess said. She refreshed to some extent in respect to Mr. Hawley's statement.

TRIAL EXAMINER GATES:

I think Mr. Moscovitz is entitled to pursue this cross examination.

BY MR. MOSCOVITZ:

Q. Can you answer that question?

A. What was the question?

MR. MOSCOVITZ:

Will the Reporter please read the question?

(The Reporter read the question as follows:

"Q. Did they speak about the Union?")

A. I can't recall if they did or not.

MR. MOSCOVITZ:

That is all.

MR. GEROFISKY:

That is all.

(Witness excused.)

MR. GEROFISKY:

Mr. Ruby.

ORSHAN RUBY was called as witness by and on behalf of the Respondents, and having been first duly sworn, was examined and testified as follows:

Direct Examination

BY MR. GEROFISKY:

Q. Mr. Ruby, what is your full name?

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A. Orshan Ruby.

Q. Are you residing in Somerville?

A. Yes.

Q. Are you employed by the Somerset Manufacturing Company?

A. That is right.

Q. And were you so employed in July and August, September, 1935?

A. Yes.

Q. What capacity?

A. What do you mean?

Q. What was your position then?

A. The same as it is now.

Q. What was that?

A. The taking care of the plant.

Q. You are supervisor of production?

A. Supervising production in the plant.

Q. Now, Mr. Ruby, have you the authority to employ help at the plant?

A. Yes.

Q. And have you employed help during the time that you have been there?

A. That is right.

Q. Have you at any time in your association with the Somerset Manufacturing Company, up to date, ever required a girl to terminate any Union activity before she could obtain employment in your plant?

A. I never have.

Q. Did you at any time ever discharge an employee because of Union activity?

A. No.

Q. Marie Marano, a witness for the Labor Board, from the first proceedings—you know her?

A. I do.

Q. And did you know her in July and August, 1935?

A. I did.

Q. Was she employed at the Somerset Manufacturing Company plant?

A. Yes.

Q. At that time?

A. That is right.

Q. Marie Marano, page 165 from the transcript of record testified in answer to the question concerning a conversation with you as follows: "A. He asked me what the Raritan Reds were going to do. Were they going to join the Union or not. And I told him the girls had a right to do what they pleased, and the boss had a right to do what he pleased, and we had a conversation, but that was all he said to me." Did you ever make any such assertion to Marie Marano as I have just read?

A. I never said anything of that kind.

Q. Did you ever tell Marie Marano that she could not work at your plant and be a member of the Union at the same time?

A. I did not.

Q. Or tell her in effect and substance that she could not have employment there if she had any union affiliation?

A. I did not.

Q. Do you know Ethel Rice?

A. I do.

Q. Did you know her in July, August and September of 1935?

A. I did.

Q. Was she at some time during those three months in the employ of the Somerset Manufacturing Company?

A. She was.

Q. Was she under your supervision?

A. She was not.

Q. Did you at any time ever discharge Ethel Rice?

A. No.

Q. Had Ethel Rice at any time while she was employed at Somerset been under your supervision?

A. From time to time probably.

Q. And did you have occasion to lay Ethel Rice off temporarily from time to time while she was engaged there?

A. No.

Q. What?

A. No.

Q. Did you ever have occasion to tell her there was no work today, come back another day?

A. Oh yes, from time to time, as the other girls.

Q. You never fired her?

A. No.

Q. Or discharged her?

A. No.

Q. Did you know Lorraine Heitz?

A. I do.

Q. She was also known as Lorraine Vones?

A. Yes.

Q. Did you know her as an employee of the plant in 1935?

A. I did.

Q. Did you ever discharge or fire Lorraine Heitz?

A. I did not.

Q. Now, Lorraine Heitz testified in February, 1936, page 233 of the record: "A. I had a load of work taking it down on the elevator, and Mr. Ruby

came over and stopped the elevator, and he said he wanted to ask me a few questions. He asked me if I had heard anything about the girls joining a union, and he asked me if I was interested in it. And he asked me several questions about the union, and I told him I had no information to give him. He told me that I don't need to be afraid, that I would not be sorry for any information given to him. And I told him I was sorry that I had no information for him, and he said all right, go on with your work." Did you ever have a conversation with her?

A. I never had any conversation with that girl.

Q. Never?

A. Never spoke to her, and never told her anything at any time.

BY MR. MOSCOVITZ:

Q. Do I understand your answer to be you never had any conversation at any time?

A. Unless she would ask me for work or anything of the kind, that is about all.

BY MR. GEROFISKY:

Q. On that same page, 233, she answered: "Mr. Ruby did not have anything to do with my work. He was foreman to the girls that operated the machines." That was right?

A. That was right.

Q. By reason of that fact, you had very little, if anything, to do with that girl at any time?

A. That is right.

Q. Now, Mr. Ruby, did you know Fay Katz?

A. I did.

Q. Was she in the employ of the Somerset Manufacturing Company?

A. That is right.

Q. Prior to September 18, 1935?

A. Yes.

Q. Did you at any time ever tell Fay Katz that she could not work at the plant and be a member of the union at the same time?

A. I never said anything of the kind.

Q. And did you at any time discharge Fay Katz?

A. I did not.

Q. Were you supervisor in charge of Fay Katz's work?

A. That is right.

Q. What work did she do at the plant?

A. She was an operator.

Q. By the way, how many years' experience have you had in this work supervising?

A. Supervising, about eighteen years.

Q. What have you to say with respect to Fay Katz's ability as an operator? Was she a good one or a bad one?

A. Well, she was not an operator at all.

Q. By that, you mean what?

A. She was not an operator at all. You could not trust her with anything. You could not consider her as an operator.

Q. And how long did you have Fay Katz under you as an operator?

A. I imagine about a year.

Q. And did you take any steps to find work for Fay Katz?

A. I did, as much as I could.

Q. Did you try to improve conditions for her with respect to getting some work that she was particularly adapted for?

A. Well, at that time we have not had work of that kind.

Q. Did you ever tell Fay Katz that there was no work for her? She would have to come back another day?

A. I did.

Q. Lay her off temporarily?

A. I never laid her off, but I told her to come the next day, and so on and so forth.

Q. And why on that occasion or other occasions did the same thing happen?

A. Because I did not have the right type of work for the girls.

Q. Was that a practice with respect to Fay Katz and the other girls as well?

A. What do you mean by practice?

Q. Did you lay off any other girls because there was not any work for them?

A. I did.

Q. From time to time?

A. From time to time.

Q. Did you try to help Fay Katz, knowing that she was a poor operator?

A. I did. I did as much as I could for her.

Q. What did you do for her?

A. I tried to learn her, I tried to teach her to work, and all kinds of things. There is not a thing that that girl could pick up, as far as operating is concerned.

Q. And despite that, you held her there for a year?

A. I did.

Q. Can you assign any reason why you held her there for a year or so?

A. Well, I won't say no reason at all. After all, she comes from a poor family and I happened to know the family, that is about all.

Q. And you did not discharge her?

A. I did not.

Q. Now, did you know Anna Santora?

A. I did.

Q. Was she employed in the Somerset Manufacturing Company?

A. That is right.

Q. In 1935?

A. That is right.

Q. Did you ever tell Anna Santora that she could not work there and associate with the Union at the same time?

A. I never told her.

Q. Or words to that effect?

A. I never told her.

Q. Do you know Elysabeth Shoaka?

A. I do.

Q. And she worked at the plant to August 14, 1935? Did you ever discharge her?

A. I never did.

Q. Now, on page 327 of the record Mrs. Elysabeth Shoaka testified as follows:

"I was laid off. He discharged me. He said I was causing too much trouble. On the day between August 15th, was the next day after I signed.

"Q. You mean you were let out the day after you signed for the Union?

"A. He discharged me. He said, 'You were causing too much trouble.'

"Q. Who is he?

"A. Mr. Ruby, the foreman."

Did you discharge Mrs. Elysabeth Shoaka on or about August 14th, or 15th, 1935?

A. I have not discharged any of these girls.

Q. Specifically, Elysabeth Shoaka?

A. That is right.

Q. Did you ever say to her that you are causing too much trouble?

A. I never said anything of the kind.

Q. Now, did you ever have a conversation with Mrs. Elysabeth Shoaka about a Union?

A. I did not.

Q. And on page 328 in the record, Mrs. Shoaka testified as follows:

“Q. Had you ever before your discharge, had you ever any conversation with Mr. Fainblatt regarding the Union?

“A. Not Mr. Fainblatt.

“Q. With whom?

“A. With Mr. Ruby.”

So in the face of that testimony you say that you never spoke to her?

A. I never spoke to any of these girls about the Union at any time.

Q. I am speaking now of Elysabeth Shoaka.

A. This girl.

Q. And you deny that?

A. That is right.

Q. Do you know Anna Matteis?

A. I do.

Q. And was she employed at the plant in July, August, September, or thereabouts, 1935?

A. She was.

Q. Did you ever discharge Anna Matteis for union activity?

A. No.

Q. Did you ever tell her that she could not work at your plant?

A. No.

Q. And be associated with the International Ladies' Garment Workers' Union or any other Union?

A. I never told her that.

Q. Anna Matteis was also known as Angelina Matteis?

A. Yes.

Q. On page 347 in the transcript of the record, her testimony at a former hearing, is recorded as follows:

"Q. Now, when was the last day you say you worked for the company?

"A. The last day was August 22nd.

"Q. That was the day after you joined the Union?

"A. Yes.

"Q. What happened to you on that day?

"A. Well, the day before I went home about ten thirty because I was not feeling well, so I went in the next morning and the work usually starts at eight o'clock, so I asked for work, and I was told to wait.

"Q. By whom?

"A. By Mrs. Evans and Ruby told me to wait too.

"And so I waited until eight thirty and Mr. Ruby called me to the side where the work was and he told me, he said, 'I am sorry, you are causing too much trouble. I have no more work for you.'

"I said, 'Can you prove it?'

"And he said, 'No.'

"So I said, 'It is all right with me.'

"So I took my belongings, had my work marked and I went home."

Q. Did you ever have such a conversation with her on August 22nd?

A. I did not.

Q. And did you ever tell her that you had no more work for her on August 22nd?

A. I did not.

Q. 1935?

A. I did not.

Q. As a matter of fact, did Angelina Matteis give you any trouble on August 22nd or before that?

A. Not that I can remember.

Q. Mary Gecik. Did you know her as an employee of the Somerset Manufacturing Company?—Mary Gecik?

A. I can't recall the name.

Q. Do you remember her?

I can't hear you.

A. I do not. I can't recall a girl of that name. I don't know her.

Q. Do you know Teresa Yemma?

A. I do.

Q. Was she employed by the Somerset Manufacturing Company?

A. She was.

Q. And did you on August 21, 1935 discharge her from employment from the company?

A. No, I did not.

Q. Now, Mr. Ruby, in the course of your work at the plant, there were slow seasons and busy seasons?

A. That is right.

Q. And at busy seasons you had a greater number of employees over the slow season period?

A. That is right.

Q. And what would you do with the employees

when the work slacked down or the season slowed down?

A. Well, we stopped a couple of days a week, that is all. Say we had five day's work, we worked two and a half days instead of five.

Q. Did you ever tell some of the girls that there was not enough work, you would call for them?

A. I don't think I did. Not those that worked for me.

Q. So during the close-down of a couple of days, the girls were without work?

A. What do you mean by a close-down?

Q. You said that during the slow seasons you would close down operations.

A. That is right.

Q. Is that so?

A. Yes.

Q. And for those days that you would close down on your operations, you naturally let the girls go?

A. That is right.

Q. And has that been the practice with the company from the time it started activity out there in Somerville?

A. Well, not only—you mean since the company is in existence?

Q. Yes.

A. That is right, since I am with the company.

Q. The month of August, 1935 do you remember that month?

A. I do.

Q. Do you remember the month of September when there was a strike at the plant?

A. I do.

Q. Was the month of August, 1935 a busy or a slow season?

A. It was a slow season then.

Q. That month was a slow month?

A. That is right.

MR. GEROFISKY:

That is all.

TRIAL EXAMINER GATES:

I wonder if we want to start on the cross examination at this hour.

MR. HALPERN:

It is just this, if your Honor please. He is the only foreman down there, and we should like him to get away as soon as possible.

TRIAL EXAMINER GATES:

Off the record.

(There was a short discussion off the record.)

Cross Examination

BY MR. MOSCOVITZ:

Q. When you say, Mr. Ruby, that you did not discharge any of these people, that Mr. Gerofsky asked you about, do you mean that on the day they were last employed you did not speak with them at all about their having to leave?

A. Not as far as the Union activity is concerned. I spoke to them. I had to answer them questions of work or anything of the kind.

Q. But on the last day that these girls were employed, did you tell them at least there was no more work for them?

A. No, I did not.

Q. Are there any girls of the number that Mr. Gerofsky asked you about that you had to lay off?

A. The only girl there is Anna Santora. It was about ten minutes of ten, and why I told the girls

that I know that they are going out on strike at ten o'clock, and there is no use of giving her any work?

Q. You told her that?

A. Yes.

Q. Did you tell that to any other girls?

A. I did not.

Q. How did you know that the girls were going out on strike at ten o'clock?

A. I had heard it. I think we have had that in Somerset paper.

Q. You mean you read it in the Somerset Gazette that about ten o'clock of that particular day?

A. I don't remember.

Q. Just a minute. That the girls were going to go out on strike?

A. As I say, I don't recall that I did read it in that paper, but I think I did read somewhere that they are going out on strike at ten o'clock.

Q. At ten o'clock that morning?

A. Yes.

Q. Can you tell us where you read it?

A. No, I could not.

Q. Are you sure you did not hear it from someone?

A. I did. I must have heard it from somebody.

Q. Then, you did not read it?

A. I don't know whether I did read it or I heard it from somebody.

Q. Now, do you have any recollection as to who the person was from whom you heard this?

A. No, I have not.

Q. And was there a strike at ten o'clock?

A. There was.

Q. So you were right?

A. That is right.

Q. Now then, were there any other girls among those named by Mr. Gerofsky that you spoke with about their leaving the employ of the company?

A. What do you mean by leaving?

Q. Well, that there would be no more work for them, that things were slow, to take a week off or two weeks off?

A. Yes, I did.

Q. Which of these girls?

A. I did not say take the week off or the day off or anything of the kind. I used to tell those girls to come the next day, and if I have work I will give it to them.

Q. Are those the girls Mr. Gerofsky named to you?

A. That is Fay Katz—let's say, and—

Q. Let's take Fay Katz, for instance.

A. Yes.

Q. Do you recall when she was last employed by the company?

A. That is right.

Q. Did you speak to her on that day?

A. On that day.

Q. On the day when she was last employed?

A. On the day which she was last employed, I think I did. She asked me for work, yes.

Q. Do you remember that she asked you for work?

A. Yes.

Q. What did you say?

A. I said I have not any work.

Q. That is what you said?

A. Yes.

Q. Did you say anything else?

A. No, I don't think I did.

Q. What did she say, do you recall?

A. I don't know what she said. Do you mean the last day, the day when they went out on strike?

Q. The day when she last worked for the company?

MR. GEROFSKY:

Can you specify the date?

A. I don't understand that question.

MR. MOSCOVITZ:

I will have to go through the record and get it.

MR. GEROFSKY:

Why not take the last day she worked at the plant?

MR. MOSCOVITZ:

That is my question. But he does not remember.

A. Was it the question that the day she last worked in the plant?

BY MR. MOSCOVITZ:

Q. The day she last worked.

A. Did I speak to her?

Q. Yes.

A. I did.

Q. Now, do you remember anything else that you might have said to her, that you said to her at that time?

A. No, I don't.

Q. Do you recall what she said to you?

A. No, I don't.

Q. And after you told her that there was no more work she left?

A. Well, she did not leave. She was there in the shop for a time, and then she went away.

Q. That was the last you saw of her in the shop, is that right?

A. She came every day.

Q. Every day?

A. Every day.

Q. To apply for work?

A. Yes, to ask for work.

Q. Did she come to you every day and ask for work?

A. She did come to me sometimes, and I have foreladies.

Q. She never received further work, is that right?

A. Yes.

Q. Do you recall just what kind of work she was doing when she last worked for you?

A. Yes.

Q. What was it?

A. She was working on skirts.

Q. Were they winter skirts?

A. They were.

Q. You were making your winter season goods?

A. What do you mean?

Q. Were you making samples or were you filling orders?

A. I was making stock.

Q. To meet the needs of your winter season?

A. Yes.

Q. So that was your regular winter season, is that it?

A. Yes.

Q. And the winter season is not an off season, it is an on season, isn't it?

A. It is an on season.

Q. So that there is plenty of work to be done, isn't that right, for the girls?

A. What do you mean by that?

Q. It was not a slack season?

A. No, Mr. Moscovitz, at that time, you see we have had a slow season, and we have not had any skirts, we had a little skirts and then we started on a line of Ski suits. You see we had corduroys on which none of our girls ever worker before. You see. And as a rule when we have this, the better girls we give the work, and the help that does not know how to work at it, we lay them off for awhile until we break in the others, and then we call in the other help there to work.

Q. I understand. Is that what you did in this instance?

A. That is right.

Q. Now say Katz is an operator then who was let out, but someone else was taken on to do ski suits?

A. No, nobody was taken on. Only the girls, the better class of help.

Q. Were kept?

A. Were kept and made ski suits.

Q. When did you start to take people on again?

A. I did not take them on until after the strike.

Q. Not until after the strike?

A. That is right.

Q. So that from the time Fay Katz last worked for you until after the strike was over you did—

A. Not until after the strike was over. After the strike broke out.

Q. After the strike started?

A. That is right.

Q. No-one was taken on?

A. That is right.

Q. Do you recall how long a period of time that was?

A. Well, I will say about four weeks, I guess.

Q. So that in that approximate four week period, no new girls were taken on at all?

A. None.

Q. When the strike started, you did take on new girls, is that right?

A. That is right.

Q. Did you take on a new girl to do the kind of work that Fay Katz was doing?

A. I could not say exactly whether I took on a new girl to do the work Fay Katz had been doing as far as that is concerned, Fay Katz never worked on ski suits, so I could not say that.

Q. But did you take on new girls to work on ski suits?

A. I did.

Q. They never worked on ski suits either, did they?

A. Maybe they did.

Q. Answer me. Did the new girls you took on ever work on ski suits?

A. They did not work on ski suits, but let's say they worked on a line that is something like ski suits.

Q. What is that?

A. Let's say they worked in a factory of jackets or anything of that kind.

Q. Brand new girls?

A. Yes.

Q. Factory of jackets where, in Somerville?

A. In Somerville.

Q. What factory?

A. We have Alman there. He has a factory of about sixty machines.

Q. Who else?

A. We have dressmaking plants, not in Somerville, in Manville and Bound Brook.

Q. Did you get some?

A. I got ~~some~~ dress girls.

Q. Girls who had worked on a similar line?

A. That is right.

Q. Say Katz had worked also on skirts?

A. Not exactly on skirts. She worked on cotton work, slacks.

Q. That is the kind of work that should qualify a person to work on ski suits too, would it not?

A. I would say no.

Q. You would say an operator in that line of work could not become an operator and do an operator's work in ski suits?

A. Yes she could. I don't say she can't. Don't you see, the question of these here, when we started a line of ski suits you see, we have to start with the better help.

Q. I see.

A. You see, now until we were ready to put on let's say girls like Fay Katz, or any one of the kind, they went out on strike.

Q. If Fay Katz had not gone out on strike, would she have been taken on to do the new work?

A. Well, you mean because she was out on strike or anything of the kind?

Q. No.

A. Probably she would have been in time. I would not say No.

Q. You would not say No.

A. Yes.

Q. Would you have taken her on to do ski suit work?

A. I would in time.

Q. What do you say in time.

A. Why do I say in time?

Now, we will have, we will say different works in between those ski suits, and we will see how she works.

Q. You knew already for a year what kind of work she did.

A. That is just why I did not.

Q. You kept her during that whole year's time when she was not a good operator?

A. On skirts.

Q. Because you had sympathy for her family?

A. She did some work different from other operators in the shop.

Q. She was different from the others?

A. Not only her, there were about ten or twelve. We have them today in the shop.

Q. You laid them off too, when it is slack?

A. That is right. I would not say I laid them off. I kept them on say coats that has a lining. So you give it to the floor help. So if you have not got no lining, you couldn't give it to them.

Q. Was there work you took on which was the kind of work Fay Katz did?

A. At what time?

Q. After the strike started.

A. Yes.

Q. And was there an operator or were there operators who were employed to do that work?

A. Yes.

Q. So that that operator, or those operators were

employed on the job that previously was done by Fay Katz—

A. I would not say No.

Q. You would not say No?

A. No.

Q. All right.

Now, then the only reason why you did not ask Fay Katz to come back to do that work was because she was on strike, is that it?

A. I did not ask any one of them, not only Fay Katz.

Q. Now then, other girls outside of Fay Katz, did you speak with them too on the day that they last worked for the company and told them that you had no more work for them?

A. I never said to any girls that I have no more work for them.

Q. Well, you said it to Fay Katz.

A. Did I say to Fay Katz I have no more work for her?

Q. What did you say. Maybe I misunderstood her.

A. Nevertheless she went out on strike and I then did not speak to any of the girls.

Q. On the day Fay Katz last worked for the company, what did you tell her?

A. I told her to come the next day.

Q. Earlier in your testimony you testified you told her you had no more work.

A. I never said to any of these girls I had no more work for them. I told them to come the next day and I might give it to her.

MR. MOSCOVITZ:

Could the Reporter go back in the record and find that testimony?

(The Reporter read from the previous testimony as follows:

"Q. Did you take on a new girl to do the kind of work that Fay Katz was doing?

"A. I could not say exactly whether I took on a new girl to do the work Fay Katz had been doing. As far as that is concerned, Fay Katz never worked on ski suits, so I could not say that.

"Q. But did you take on new girls to work on ski suits?

"A. I did.")

MR. MOSCOVITZ:

That is not it. But never mind.

BY MR. MOSCOVITZ:

Q. Did you ever have any conversations at all with any of these girls that Mr. Gerofsky asked you about regarding the Union?

A. I did not.

Q. Did you ever tell any one of them that they should have nothing to do with the Union?

A. I never did.

Q. So that you never even went so far as to mention Union to any of one of the girls?

A. I never did anything of the kind.

Q. Now, you came to Somerville from New York, didn't you?

A. That is right.

Q. Were you ever a member of a Union in New York?

A. Yes.

Q. What Union?

MR. HALPERN:

I am going to object to all that line of questioning because I can't see that it is material to this case, whether he belonged to a Union before or not.

Furthermore, it is improper cross examination. It has no bearing. It is just going to prolong this hearing.

TRIAL EXAMINER GATES:

He may answer.

A. Yes.

BY MR. MOSCOVITZ:

Q. What Union?

A. Local 15.

Q. Of the International Ladies' Garment Workers' Union?

A. The International Ladies' Garment Workers' Union.

Q. The same organization that was organizing in Somerville, but a different Local?

A. Yes.

Q. Were you a member of it before you came to Somerville?

A. No.

Q. It was a long time ago?

A. Yes.

MR. GEROFISKY:

Mr. Examiner, will you note the objection with respect to this whole line of testimony?

TRIAL EXAMINER GATES:

It may be so understood, certainly.

BY MR. MOSCOVITZ:

Q. When you came to Somerville, did you come from the Lees Sportswear Company?

A. No, I did not. You mean when I came to Somerville? I did so.

Q. You had been employed by Lees Sportswear Company?

A. Yes.

Q. In what capacities?

A. Running the factory.

Q. In New York?

A. No.

Q. Where?

A. Long Island.

Q. Was that a Union shop?

A. No.

Q. Did you come to Somerville at the time the Somerset and Somerville Companies were started?

A. That is right.

Q. Is your job superintendent?

A. That is right.

Q. Now, when did you first learn of the International Ladies' Garment Workers' Union was in Somerville and were trying to organize your shop?

A. I can't understand you.

Q. When did you first learn that the Union was trying to organize the shop in Somerville?

A. When did I first learn? Or when did I first hear of the Union coming to Somerville to organize? Well, I would say ten or twelve weeks before the strike.

Q. Do you recall from whom you learned it?

A. No; I did not. Just a rumor, that is all.

Q. Did you speak with Mr. Fainblatt about it?

A. I did.

Q. Do you recall when that was?

A. When I spoke to Mr. Fainblatt? Occasionally.

Q. From time to time?

A. Yes.

Q. About the Union?

A. That is right.

Q. Was that before the strike?

A. It was.

Q. Before any of these girls were last employed by the company?

A. Before what?

Q. Before the last days these girls worked for the company?

A. Yes.

Q. And did you speak with Mr. Fainblatt about it after Mr. Fainblatt spoke with the union representatives?

A. Yes.

Q. Do you recall what your conversations were with Mr. Fainblatt about the Union?

A. He just told me that Mr. Posner was here and spoke to him about certain things, that is about all.

Q. Did you have anything to say about it?

A. No, I have not.

Q. Did you ever tell him what you thought he ought to do with the Union?

A. No, I never told him anything of the kind.

Q. Did he ever ask your opinion?

A. No, he did not.

Q. So your conversations were simply limited to your finding out what he was doing with Mr. Posner and about the Union?

A. Not exactly finding out. Just speaking from one man to another, that is all.

Q. Did you ever discuss the matter with your forelady?

A. With my forelady? Well, from time to time.

Q. Who was your forelady?

A. Mrs. Evans.

Q. Did you have any other forelady?

A. Not at that time.

Q. So there were no other persons who could classify as a boss outside of that forelady and yourself?

A. That is right.

Q. And Mr. Fainblatt over both of you?

A. Yes, that is right.

Q. What did you say her name was?

A. Mrs. Evans.

Q. Was she in charge of all the girls under you?

A. Not all. Part of them. She had a certain part.

Q. How many girls?

A. About fourteen.

Q. And were any of these girls that Mr. Gerofsky, asked you about girls that she was in charge of?

A. All of the girls, you mean any of these girls?

Q. Yes.

A. Yes. There was Anna Santora, as far as I can remember.

Q. Is that all? Fay Katz?

A. Fay Katz, that is right.

Q. Ethel Rice?

A. No.

Q. Ethel Rice would be under you?

A. No, Ethel Rice was not under me.

Q. Who was she under?

A. Mr. Fainblatt.

Q. How about Lorraine Heitz?

A. Lorraine Heitz I think was under Mr. Fainblatt.

Q. And Anna Santora you have already told us about?

A. Yes.

Q. How about Shoaka?

A. Shoaka was under me.

Q. Matteis?

A. Also me.

Q. Yemma?

A. I still can't recall that name.

Q. All right. I thought you could not recall Gecik before. Do you recall Yemma?

A. Did I recall her before?

Q. Did you recall Yemma?

A. I think, Yes.

Q. Now, are you sure?

A. I think I did.

Q. Well, if you are not sure, how could you have said to Mr. Gerofsky when he asked you if you did not discharge her?

A. As far as that is concerned, I did not discharge any of the girls in the shop. I said that before. None of these girls were ever discharged by me or by the forelady of the shop.

Q. No question in your mind now about any of the other girls?

A. Whether I discharged them?

Q. Whether you even know them.

A. More or less, I do I guess. After all, it was so long but I remember each one of them.

Q. More or less?

A. More or less.

Q. Now, when you spoke with your forelady about the Union, was it also at the time the Union was organizing?

A. We never spoke about it. From time to time she used to come over and tell me, "You know there is a rumor that the shop is going to be organized, and so on."

But that is as far as we went, and no further.

Q. Did she ever mention names to you specifically?

A. She never mentioned names.

Q. Did you ever mention any to her?

A. No.

Q. Did you know names?

A. Yes, we did know so far as the girls were concerned, I won't say no.

Q. You did know?

A. Yes.

Q. How did you know?

A. How did I know? Well, you can tell those things.

Q. How?

A. Each one tells,—each one tells you and the others comes and tells you.

Q. You found out from other workers who told you about it?

A. Yes.

Q. Do you recall who these other girls were?

A. No, not exactly.

Q. Can you name one?

A. No, I don't think I can.

Q. You mean would you rather not name the person, or don't you remember?

A. Well, it is not the question of naming the person. Really those girls are not with us any more, and that is about all I can say.

Q. Don't you remember the names now?

A. No, I don't.

Q. You mean all these girls who told you about the other girls are no longer with you?

A. What?

Q. Are no longer with you.

A. Not all of them. You mean those girls?

Q. That told you.

A. That told me about the others. Not all. Maybe I have one girl.

Q. Who is this one girl that would tell you about the Union?

A. I think her name was Vermilyea.

Q. Vermilyea what?

A. I don't know her second name.

Q. Is she still working for you?

A. No, she is not.

Q. Did she keep you advised of all the things that the Union boys and the Union girls were doing?

A. That is right.

Q. Would she tell you what would go on at the meetings?

A. She would from time to time. I don't know whether she did tell me the truth or not, but she used to come and tell me.

Q. Did she tell you that all during the period of time up until the strike took place?

A. Well, I would not say. For about a week or so.

Q. Did you learn from her that Fay Katz was active in the Union?

A. I have not learned from her anything of the kind.

Q. Now, you don't want to contradict yourself, do you?

A. I do not.

Q. Now, you told me that she told you all the things about the Union.

A. That does not mean to say I have learned anything from her. I have heard from her, that is about all.

Q. Heard what, about Fay Katz?

A. About Fay Katz, what is the difference Fay Katz or any of the other girls.

Q. No difference.

A. She used to come and tell me, this one and the other.

Q. She would tell you about particular individuals?

A. She would.

Q. You don't deny she told you about Fay Katz?

A. I do not.

Q. You don't deny she told you about these other girls Mr. Gerofsky asked you?

A. She did.

Q. She did?

A. Yes.

MR. MOSCOVITZ:

That is all.

Redirect Examination

BY MR. HALPERN:

Q. Did you solicit her to find these things out for you?

A. No, she used to come around and tell me, that is all.

MR. HALPERN:

That is all.

MR. MOSCOVITZ:

That is all.

TRIAL EXAMINER GATES:

Is it satisfactory to recess at this time?

MR. MOSCOVITZ:

I would like to ask a favor if I may on the record.

I have just received word an uncle of mine is on his death bed out at Haddonfield, New Jersey, and have asked that I come out there. I would like to go. I don't know if I will be back in the morning, but I assume that I will, if necessary. But I would rather adjourn over until Monday morning if it is satisfactory to everyone.

MR. GEROFISKY:

We have no objection.

In fact, we would like to accede to Mr. Moscovitz's request.

TRIAL EXAMINER GATES:

Off the record.

(There was a short discussion off the record.)

TRIAL EXAMINER GATES:

We will recess for a few minutes at this time.

(The hearing recessed for a few minutes.)

TRIAL EXAMINER GATES:

The hearing is adjourned until Monday, October 25th in this room, at ten o'clock.

At the request of Mr. Moscovitz, however, this time is subject to confirmation later this afternoon, in Mr. Moscovitz's office.

(Whereupon, at 1:20 o'clock p. m., October 22, 1937, the hearing was adjourned to 10:00 o'clock a. m. October 25, 1937.)

HEARING (Continued)

Room 942,
233 Broadway,
New York, N. Y.,
Monday, October 25, 1937.

The above entitled matter came on for hearing, pursuant to adjournment, at 10:00 o'clock a. m.

Before:

ROBERT M. GATES, Trial Examiner.

DAVID A. MOSCOVITZ, Esq., Attorney on behalf of the Board.

LEON GEROFISKY, Esq., (Central Bldg., Somerville, N. J.)

JOSEPH HALPERN, Esq., and T. GIRARD WHARTON, on behalf of the Respondents.

PROCEEDINGS

TRIAL EXAMINER GATES:

The hearing may proceed.

MR. GEROFISKY:

I will call Miss Recchia.

CARMELLA RECCHIA a witness called by and on behalf of the Respondents, and having been first duly sworn, was examined and testified as follows:

Direct Examination

BY MR. GEROFISKY:

Q. Please state your name.

A. Carmella Recchia.

Q. Where do you live?

A. The street and town?

Q. Yes.

A. 82 Second Avenue, Raritan, New Jersey.

Q. How long have you lived there?

A. Twenty one years.

Q. Are you working today?

A. Yes.

Q. Where?

A. Somerset Manufacturing Company.

Q. And how long have you been working there?

A. I believe I can't answer that question.

Q. Now, when did you first go to work for the Somerset Manufacturing Company?

A. That was two years ago.

Q. That is in 1935?

A. Yes.

Q. And were you working there before the strike activity?

A. Yes.

Q. How long before the strike activity were you working there, about?

A. About a year.

Q. And when the strike occurred, did you stop work?

A. Yes.

Q. Were you one of those who went out on strike?

A. Yes.

Q. How long were you away from the Somerset before you came back to work?

A. About seven months.

Q. Did you have employment between the time you walked out on strike and the time you went back again?

A. Yes.

Q. Where did you work?

A. At the Ivona Skirt Shop, in Plainfield, and a dress shop in Manville.

Q. How long did you work at the Ivona?

A. One month.

Q. How long did you work at the Manville?

A. Two weeks.

Q. Miss Recchia, did you join the Union, the International Ladies' Garment Workers' Union?

A. Yes, I signed a card.

Q. When did you sign a card?

A. August, the latter part of August.

Q. What year, do you remember, was it the same year of the strike?

A. Yes.

Q. 1935?

A. Yes.

Q. Now, where did you sign a card?

A. In Harmony Hall, Raritan.

Q. Do you remember the exact date when you signed that card?

A. I don't.

Q. Did you pay any dues to the Union?

A. No.

Q. Did you receive any compensation from the Union?

A. While I was on strike, Yes.

Q. What did you do in return for that compensation, did you picket?

A. I did.

Q. You had never signed a card until you attended that meeting at Raritan Hall—Harmony Hall in Raritan, is that right?

A. No. That is right.

Q. Now, were you called back to work at the Somerset Manufacturing Company plant, or did you go back voluntarily?

A. I was sent for, and I went back.

Q. You were sent for?

A. Yes.

Q. And who sent for you?

A. The foreman. One of the girls came to call on me and said the foreman asked for me.

Q. And that was after you had gone out on strike?

A. Yes.

Q. After you had signed a Union card?

A. Yes.

Q. And did you go to the plant?

A. Yes.

Q. Who did you see when you went back after speaking with that girl?

A. The foreman.

Q. Do you know the name of the foreman?

A. Mr. Ruby is what we called him.

Q. Mr. Ruby?

A. Yes.

Q. Were you immediately hired?

A. Yes.

Q. Did Mr. Ruby ask you if you were still associated with the Union?

A. No.

Q. Did anyone in the plant in a supervisory capacity ask you if you were still associated with the Union?

A. No.

Q. There were no demands made that you terminate your association with the Union, were there?

A. No, there weren't.

Q. Did Mr. Fainblatt ever ask you—Withdraw that. Do you know Mr. Fainblatt?

A. Yes.

Q. And do you know Miss Fainblatt, who is sitting on my right?

A. Yes.

Q. Did either one of those persons ever ask you to terminate your association with the Union?

A. No.

Q. Miss Evans, do you know her?

A. Yes.

Q. Did she ever ask you to terminate your associations with the Union?

A. No.

Q. At any time when you worked at the plant were you asked whether or not you were a member of the Union?

A. No.

Q. Now, have you been working steadily since you returned?

A. I have.

Q. Are you satisfied with the salary that you are receiving there?

A. I am.

Q. Were you satisfied before the strike with the salary?

A. Yes.

Q. And were the working conditions at the plant prior to the strike the same as the working conditions are at the present time?

A. Yes.

Q. And are the working conditions at the plant satisfactory to you today?

A. Yes.

Q. I am speaking, of course, with respect to cleanliness and light and air in the plant.

A. Yes.

Q. And would you say you were satisfied with the management and the supervision on the part of your supervisors prior to the strike and after the strike?

A. Yes.

Q. A number of girls remained in the plant on the 18th day of September, 1935 working when the strike was called, is that right?

A. Yes.

Q. And those girls continued working that day, is that right?

A. Yes.

Q. You know that?

A. Yes.

MR. GEROFISKY:

I think that is all.

Cross Examination

BY MR. MOSCOVITZ:

Q. Miss Recchia, when you went out on strike and went on the picket line, you weren't being paid for picketing were you?

A. No.

Q. Wasn't the relief money that you got from the money so much a week?

A. Yes, but we had to picket for it too.

Q. Yes. That was part of your activity while you were on strike was to picket, isn't that so?

A. Yes.

Q. Wasn't that part of your activity in order to try and win the strike was to picket and have signs and show the public what you were picketing about?

A. Yes.

Q. But you weren't hired by the Union to picket at so much a week, were you?

A. No.

Q. Now, when you went out on strike you went out on strike you went out with other girls for a certain reason, didn't you?

A. Yes.

Q. What was the reason, do you recall?

A. Well, it was not just because I might have

joined the Union. Most of them were from my home town, and I thought there would be trouble afterwards if I did not. I thought I would picket with them and see what would become of it.

Q. That was your reason?

A. That was my reason.

Q. Didn't you go out on strike to try and improve your pay and better yourself?

A. I was well satisfied.

Q. You were? So that you were just one of those who went out because you thought that if the Union would win then you would want to be with the Union?

A. Yes.

Q. And you had no question then about improving your own personal condition in the plant?

A. No.

Q. You are sure of that?

A. I am sure.

Q. How much were you making a week at the time you went out on strike?

A. I always averaged \$15.00 and over.

Q. \$15.00 and over?

A. Yes.

Q. Was that for a forty hour week?

A. Yes.

Q. Then you would always make \$15.00 per week for a forty hour week?

A. Yes.

Q. Did you work piece rate?

A. Yes.

Q. You did not get a regular salary, did you?

A. No.

Q. Well, if you worked piece rate, you did not always make \$15.00 a week, did you?

A. No, I did not make just \$15.00, but I was always sure to make \$15.00 or more.

Q. What was the least amount that you made piece rate per week?

MR. GEROFISKY:

On what?

MR. MOSCOVITZ:

Per week.

MR. GEROFISKY:

How many hours?

MR. MOSCOVITZ:

That is what I will have to ask her afterwards.

A. The least?

BY MR. MOSCOVITZ:

Q. Yes.

A. I remember making \$10.00 and \$8.00.

Q. How many hours would you work a week when you would make \$10.00 or \$8.00?

A. About fourteen hours or sixteen. That was when we weren't busy at all we would have to work for about five or six hours a day.

Q. What was your piece rate, do you remember? Did you get so much a dozen?

A. Yes.

Q. What was your piece rate, do you remember per dozen?

A. We did so many different things.

Q. You had a different rate for different things?

A. Yes.

Q. Do you remember what the various rates were before you went out on strike?

A. Different fronts. The front of the coat, I was a front maker, and used to get fifty-five cents for a dozen. They were all different.

Q. And since you have gone back to work, has the rate changed or is it the same?

A. Well, the styles changed.

Q. The styles have changed? But have the rates changed? Do you get more than you got before you went out on strike?

A. About the same.

Q. You still average the same money?

A. I don't work on a machine any more.

Q. What do you do now?

A. Forelady.

Q. When did you become a forelady?

A. Last December.

Q. December, 1936?

A. Yes.

Q. And how long was that after you returned to work?

A. About seven months.

Q. So that now you work on so much a week?

A. Yes.

Q. You get a regular salary?

A. Yes.

Q. How much is that?

A. \$17.00.

Q. And that is better than what you used to make before, isn't it?

A. Yes.

Q. Now, as a forelady you are in charge of certain girls, are you not?

A. I am.

Q. How many girls?

A. About twenty eight.

Q. So that today at the time that you are testifying here now, you are a person who is in a different position than you were when you originally went out on strike, isn't that so?

MR. GEROFISKY:

I object. I think that the testimony thus far will speak for itself.

TRIAL EXAMINER GATES:

She may answer it.

You may answer it.

MR. GEROFISKY:

Calling for a conclusion,

A. Pardon me?

BY MR. MOSCOVITZ:

Q. Let me ask you: So that today when you testify here now as a forelady, you are not considered among the workers in your plant as a regular worker. You are now somebody who is like a boss, isn't that true?

A. Yes.

Q. Who is your boss now?

A. Mr. Fainblatt.

Q. And no one else?

A. No.

Q. Mr. Fainblatt is your boss, and you are the boss over these girls that you told us about, is that right?

A. No, upstairs is Mr. Ruby. He tells us what to do.

Q. He is the one who is in charge of the plant?

A. Yes.

Q. And then your immediate boss is Mr. Ruby?

A. Yes.

Q. And then you are the immediate boss over these girls that you told us about?

A. Yes.

Q. Do you like being a forelady better than being a regular worker?

A. At times.

Q. More responsibility?

A. Yes.

Q. You have to work more with the bosses?

A. No, just teaching the girls and all that.

Q. But you have to discuss things more with the bosses?

A. Prices.

Q. And you have discussions, do you, with Mr. Fainblatt from time to time?

A. No.

Q. With Mr. Ruby?

A. With Mr. Ruby.

MR. MOSCOVITZ:

That is all.

MR. GEROFISKY:

That is all.

(Witness Excused.)

MR. GEROFISKY:

Mrs. Evans.

RUTH EVANS was called as a witness by and on behalf of the Respondents, and was duly sworn.

MR. GEROFISKY:

I am wondering if I might ask a question or two of the first witness.

TRIAL EXAMINER GATES:

Off the record.

(There was a short discussion off the record.)

(Witness Evans Excused.)

CARMELLA RECCHIA, a witness for the Respondents was examined and testified further as follows:

Redirect Examination

BY MR. GEROFISKY:

Q. Miss Recchia, Wanda Kelly was one of those who went out on strike?

A. Yes.

Q. She is working there today?

A. Yes.

Q. And Ethel Hicks, do you know her?

A. She is a purser, yes.

Q. She was one of those who had gone out on strike?

A. Yes.

Q. Has she returned to work there today?

A. Yes.

Q. Do you know Rose DeMatina?

A. Yes.

Q. Was she one of those who went out on strike?

A. Yes.

Q. Has she gone back to work today?

A. Yes.

Q. Yula Melewski, did you know her?

A. Yes.

Q. Was she one of those who went out on strike?

A. Yes.

Q. Is she working there today?

A. No, after she was married she quit working.

Q. Did she go back to work after the strike?

A. Yes.

Q. And you say she, Julia Melewski is not working there today, she is married?

A. Yes.

Q. She was not discharged, to your knowledge?

A. No.

MR. GEROFKY:

I think that is all.

(Witness Excused.)

MR. MOSCOVITZ:

I wonder if we could have the witness resume the stand, Mr. Examiner, I would like to ask her a few questions.

TRIAL EXAMINER GATES:

Very well.

CARMELLA RECCHIA resumed the witness stand, was examined and testified further as follows:

Cross Examination

BY MR. MOSCOVITZ:

Q. Will you tell us how you became a forelady?

MR. HALPERN:

I object to the question. It is not proper re-direct. We have gone into all this on cross ex-

amination, and now have just asked a few questions aside from this issue, and now we are going all over it again.

TRIAL EXAMINER GATES:

You may answer it.

A. Well, the only way that I know they judge by your work and whether you understand the work or not.

BY MR. MOSCOVITZ:

Q. That is the standard you think they go by?

A. Yes.

Q. Tell us the manner in which you became a forelady, who offered you the job, what was said, when it was.

A. Ruby. Well, they were starting up another plant upstairs, and were short a forelady. So they called me over—Ruby did, and he asked me if I would like to try it. So I did.

Q. Is that all Ruby said?

A. That is all he said.

Q. He said nothing else?

A. No.

Q. You did not say anything to him?

A. No.

Q. You are sure?

A. I am positive.

Q. Didn't he say anything to you about how much money you would make?

A. No.

Q. You did not ask him?

A. I did not.

Q. When did you learn about your increase in salary?

A. About the day before I was going to be paid.

Q. The day before?

A. Yes.

Q. Where did you learn it?

A. Right in the factory.

Q. Who told you?

A. Ruby.

Q. What did he say?

A. He told me that my salary would be \$17.00.

Q. Per week?

A. Yes.

Q. When was this in relation to the time that you were rehired?

A. When was I rehired?

Q. No, when was this that you became a fore-lady?

A. In December

Q. December?

A. The latter part of December.

Q. That was how long after you went back to work?

A. Seven months.

Q. After you returned to your job?

A. Yes.

MR. MOSCOVITZ:

That is all.

(Witness Excused.)

RUTH EVANS resumed the stand as a witness by and on behalf of the Respondents, and having been previously duly sworn, was examined and testified as follows:

Direct Examination

BY MR. GEROFISKY:

Q. What is your full name?

A. Ruth Evans.

Q. Where do you live?

A. Woodlawn Avenue, Somerville, New Jersey.

Q. How long have you lived there?

A. About twelve years.

Q. Are you working today?

A. Yes.

Q. Where.

A. Somerset Manufacturing Company.

Q. And how long have you been working there?

A. Since they opened the plant, 1934.

Q. And in what capacity are you working there?

A. Forelady.

Q. How long have you been a forelady?

A. Since about two months after I started to work, in 1934.

Q. Have you worked at other plants in and about Somerville?

A. I worked at one in Somerville. I worked in New York before.

Q. How long did you work there?

A. About three months.

Q. What was the name of it, do you know?

A. Zuckman.

Q. Z-u-c-k-m-a-n?

A. That is right.

Q. What do you have to say with respect to working conditions in and about the Somerset Manufacturing Company plant? Are they good or bad.

A. They are very good.

Q. And do you base your opinion or your answer on your experience at other plants?

A. Yes, I do.

Q. And the experience at the Somerset plant?

A. Yes.

Q. And what would you say the conditions at the plant were with respect to the treatment of the girls, the operators in the production department, good or bad.

A. They are all very good.

Q. And do you know a Mr. Posner of the International Ladies' Garment Workers' Union, do you know him?

A. I have heard of him, but I do not know him.

Q. Did you ever speak with him?

A. No.

Q. Now, in your position as a forelady, did you in July, August, and September, 1935 have authority to hire any help?

A. No, I did not.

Q. And did you in those months, 1935 have authority to fire or discharge any help?

A. No, we did not.

Q. Do you know Mary Marano?

A. Yes.

Q. Was she working at the plant in the month of August, 1935?

A. Yes, she was.

Q. Was she one of the girls who went out on strike?

A. Yes, she was.

Q. Did you discharge Mary Marano?

A. No.

Q. Did you ever speak to her about Union activity?

A. No, I never did.

Q. Did you ever demand any information of any girl with respect to Unions?

A. No.

Q. Did you know Fay Katz?

A. Yes.

Q. Was she working at the plant in August, 1935?

A. She was.

Q. About that month, did you discharge or fire Fay Katz?

A. No.

Q. And in the month of September, did you discharge Fay Katz?

A. No.

Q. Now, I am referring, Mr. Examiner, to page 266 and 267 of the transcript of record, proceedings: Mrs. Evans, Fay Katz has testified as follows:

"Q. Had Mr. Fainblatt spoken with you about the Union?

"A. No, he had not.

"Q. Before August 21st?

"A. No, he had not.

"Q. Any one of your supervisory employees speak with you about the Union?

"A. Miss Evans."

Q. Did you ever speak to Fay Katz about the Union?

A. No, I never did.

Q. And she refers to the date of August 21, 1935. Did you on that specific day speak with Fay Katz about the Union?

A. No, I did not.

Q. Did you on any day refer to the Union activities of Fay Katz?

A. No, I did not.

Q. Now, did you know Anna Santora?

A. Yes.

Q. By the way, going back a moment, was Fay Katz working as an operator under you?

A. Part of the time.

Q. And Anna Santora, was she an operator in the plant in June, July, and August, 1935?

A. She was.

Q. Did you ever speak to her about Union activities?

A. No.

Q. On page 304 and 305 of the transcript of record, is this.

Anna Santora has testified in these proceedings and I will read you the testimony with respect to her.

“Q. I see. You stated you were discharged on what day?

“A. September 18th, just before the strike. You see they thought I was going to blow the whistle for the girls to get out, and Mrs. Evans, she told me there would not be any more work to me because the girls next to me, told her that I told her that I was going to blow the whistle. So she got up and told the forelady, and I heard her, because I was in back of her.”

Did anyone tell you that Anna Santora was going to blow a whistle?

A. No.

Q. Did anyone tell you that any girl other than Anna Santora was going to blow the whistle?

A. No.

Q. Did you ever have any conversation of that sort?

A. No, I never did.

Q. Anna Santora goes on to say:

"Q. Who was the forelady?"

"A. Mrs. Evans.

"Q. Who was the girl?"

"A. Fanny."

Did you know a girl by the name of Fanny?

A. Yes, we had one.

Q. You had a girl working by the name of Fanny?

A. Yes.

Q. Specifically, did you ever speak with any girl in that plant by the name of Fanny about Union activities?

A. No.

Q. Or about blowing the whistle?

A. No.

Q. Did you ever tell Anna Santora that there was no more work for her?

A. I told her that there was no more work one day for her, that day.

Q. Do you remember what day that was?

I will put it this way: Was it the day of the strike?

A. I think it was.

Q. What time of the day was it?

A. When she finished a bundle in the morning, somewhere around half past nine or so, when she finished her bundle of work.

Q. Had you ever told any girl prior to that date that there was no more work for her?

A. For the day, certainly.

Q. Beg pardon?

A. For the day, Yes.

Q. Why did you tell Anna Santora that there was no more work for her when she finished her bundle?

A. Because her line of work, the girls had already taken it up. It was the last bundle there was of that work.

Q. Was that the reason why you told her there was no more work?

A. Yes.

Q. Did you discharge her?

A. No.

Q. In fact, you had no authority to discharge her?

A. I had no authority.

Q. Did you suggest to Ruby at any time, that Anna Santora be discharged?

A. No.

Q. Was that a common occurrence in the plant telling a girl there was no more work for her?

A. Just at slow times, but there would be work the next morning when there was work taken apart.

Q. What do you have to say with respect to that period of time in August and September, 1935. Was that a slow time?

A. It was, Yes.

Q. Now, at page 305 in the transcript of record, Anna Santora has testified:

“Q. You know that after she spoke to this girl she went over to Ruby?

“A. Yes. She was talking to me before that.

She told me, she said, 'Anna, I heard you was the one that started all this trouble here.' And she said, 'You went to Mr. Posner,' and she said, 'You. She said you was the one that went to Mr. Posner and told them.' "

Did you ever speak to Anna Santora about Mrs. Posner?

A. I never spoke to any of the girls about Mr. Posner.

Q. Did you say those things that I have just read to you?

A. No, I did not.

Q. Did any such conversation take place between you and Anna Santora at any time?

A. It did not at any time.

Q. Anna Santora was a good operator, wasn't she?

A. Yes.

Q. Was she listed as one of your best operators?

A. She was listed as a front maker, and that is considered about the best.

Q. Did she make good wages?

A. Yes, she did.

Q. And you gave her a lot of work to do from time to time?

A. We tried to treat them all alike, and gave equally all we had.

Q. Anna Santora did not walk out on strike that day, did she?

A. Why, No, she did not. Not at that time. She went out a few minutes before.

Q. And was that for the reason you assigned that there was not work left for her to do?

A. No.

Q. Why did she go out a few minutes before the strike?

A. Because there was not anything left that day for her?

Q. Did you ever speak to Anna Santora? Did you ever ask Anna Santora for any information concerning Union activity?

A. I did not.

Q. Did Anna Santora ever speak with you about the Union?

A. I went around there at one time when the girls were talking and she said that anyone that joined the Union was silly.

Q. Did she direct that statement to you or to the girls in general.

A. Well, I don't know whether she was speaking to me or not, but when I just went around there she looked up at me and said that.

Q. Do you remember when that was?

A. No, I don't remember exactly when it was. It was just previous to this talk about the strike.

Q. Now, when Anna Santora was told by you that there was no more work that day for her, did you give her any instructions with respect to returning for work the next day?

A. I said there would be work the next morning.

Q. Did Anna Santora return for work?

A. She did not.

MR. GEROFKY:

Cross-examine.

Cross Examination

BY MR. MOSCOVITZ:

Q. Did you say that you worked in New York before you came to Somerville?

A. Yes, I did.

Q. Where did you work?

A. For Mr. Zinman in the Modish Form Brassiere Company.

Q. Brassiere Company?

A. Yes.

Q. Is that connected with the Universal Brassiere?

A. No, it was not. They have gone out of business since I left there.

Q. Gone out of business?

A. Yes.

Q. Did you work there, or were you forelady.

A. I worked there for seven years.

Q. As a worker?

A. Yes.

Q. Was that a Union shop or open shop.

A. It was an open shop.

Q. You have never belonged to the Union yourself?

A. No.

Q. When you worked for Mr. Zuckman in Somerville that was an open shop?

A. That was an open shop, Yes.

Q. Then you went to work for Mr. Fainblatt?

A. Yes.

Q. As I understand your testimony you had conversations with no-one about the Union?

A. No-one at all.

Q. No-one at all?

A. No.

Q. With neither the workers nor your superiors?

A. No.

Q. Including Mr. Fainblatt or Mr. Ruby?

A. Including Mr. Fainblatt and Mr. Ruby.

Q. Nor did they have such conversations with you?

A. No, they did not.

Q. Nor did any of the employees have such conversations with you?

A. No, they did not.

Q. Except for the time when you heard Santora say anyone who joined the Union was silly?

A. That was her statement.

Q. You heard no other conversation in the shop about the Union?

A. No, I did not really hear any conversation to speak of, because everybody kept quiet.

Q. Yes. And when you walked down in the shop at the time Santora made this statement, as I understand it she was talking to other girls?

A. She was talking, Yes.

Q. Was that during working hours?

A. No, it was just before working hours.

Q. You don't know then who they were talking about before you got there, do you?

A. No.

Q. So far as you know, she may have been trying to get these girls to join the Union, and when she saw you she made this statement to throw you off the track?

A. I have not any idea.

Q. Did you go to this group for any particular purpose?

A. I was carrying over a bundle of work to one of the girls.

Q. Now, when Mr. Ruby testified that there had been conversations between yourself and him about the Union, you say that you had no conversations with Mr. Ruby, or he had no conversations with you at all about the Union, you were incorrect, is that right?

A. Well, about the Union, we never spoke about the Union. It was the girls.

Q. The girls and their relation to the Union?

A. He said that the girls were talking about the Union.

Q. Yes.

So that you did have conversations with Mr. Ruby about the Union?

A. Well, if you want to put it that way.

Q. So you would change your former testimony on that point, would you not?

A. Well, he did not have anything to say regarding the Union, only just that the girls were talking about the Union.

Q. Yes.

So that there were conversations about the girls, and their relationship to the Union, is that it?

A. The day before the strike, Yes.

Q. The day before the strike?

Now, at no other time?

A. No.

Q. Are you sure of that?

A. Yes.

Q. Tell us how it was that you and Mr. Ruby discussed this question the day before the strike.

A. Well, I don't remember just how it came about, but, of course, there was a lot of talk around, all the girls at that time.

Q. Around where?

A. Around the girls. They were all talking at that time.

Q. How long had this talk been going on prior to the day of the strike, if you remember.

A. I don't remember just how long it was. It was just a few days.

Q. A few days?

A. Yes.

Q. Did you know in those few days who the leaders among the girls were?

A. No.

Q. Did you know that Fay Katz was active?

A. No.

Q. Did you know that Santora was active?

A. No, I did not.

Q. Did Mr. Ruby tell you which girls were active?

A. No, he did not.

Q. Did you know that a certain girl was bringing information to Mr. Ruby about the activities of the girls?

A. No, I did not.

Q. Now, how did you find out that these girls were talking Union in these few days before the strike?

A. Well, I don't remember. They said there was someone there at the office about the Union.

Q. Who said?

A. One of the girls was speaking, but I don't remember which one.

Q. Do you recall where it was that she was speaking about it?

A. No, I don't recall just where it was.

Q. Do you recall who it was?

A. No, I don't.

Q. Do you recall any more of the details of the statement made by this girl?

A. I don't recall just what she said.

Q. Did Mr. Fainblatt tell you subsequently that a Union man had been in to see him?

A. No, Mr. Fainblatt never spoke to me about it.

Q. Did Mr. Ruby tell you?

A. I don't remember that he did. It was just the day before. He may have mentioned when he spoke of it, but I don't remember what he said about it.

Q. You just reflect for a moment, and try to refresh your recollection on the question of whether or not Mr. Ruby told you that a Union man or a representative had been in to see Mr. Fainblatt.

A. I don't remember Mr. Ruby telling me that. I can't remember.

Q. Did you know from anyone else that this Union representative had been in to see Mr. Fainblatt?

A. Only as a rumor. I did not really know. I had not seen him.

Q. As a forelady at that time, were you in charge of a number of girls?

A. Yes.

Q. How many?

A. Fourteen.

Q. And that number increases with the increase in production, is that so?

A. That is right.

Q. What is the greatest number that you have ever had under your jurisdiction or supervision?

A. Well, at the present time it is about thirty.

Q. Now, at that time when you had fourteen working under you, Mr. Ruby was your immediate superior?

A. He was.

Q. And did you have to meet with him daily to discuss the work that the girls would have?

A. Why, as the girls finished their work he tried to help us, the best he could:

Q. He was the man with whom you were in constant contact?

A. That is right.

Q. Would you see him daily?

A. Oh yes.

Q. Talk with him daily?

A. Yes.

Q. About all matters pertaining to your work?

A. Yes.

Q. Now, do you say—I want to get it clear for the record, that at no time before the days immediately preceding the strike, did Mr. Ruby speak with you or you with Mr. Ruby about the Union?

A. I don't recall any.

Q. Well, would you say that he did not, or would you say that you did not?

A. I don't remember of him talking about the Union to me. And I know I did not.

Q. Now, when you say that you had no authority to hire or fire help, do you mean that you can't on your own power give a person the job.

A. No, I could not.

Q. And you can't on your own initiative actually

discharge a person permanently from the employ of the company?

A. No.

Q. Can you recommend the discharge of persons?

A. Well, I never did.

Q. Never have?

A. No.

Q. Have you ever told a girl that there was no more work for her on a particular day?

A. Yes.

Q. You can do that?

A. Yes.

Q. And have you ever told a girl that, and never re-employed her?

A. No.

Q. So that in every instance where you have told a girl there was no more work for her, she has subsequently been re-employed?

A. Sure.

Q. What?

A. Just when the work gives out of a certain type, she is supposed to come in the next day, that is all.

Q. When work slacks off, or for some other reason there is no work for a girl, you yourself can tell her, can't you, there is no more work for you, you go home?

A. Just for that day, that is all.

Q. It could be for two or three days, if there is no more work?

A. It has never happened to be two or three days.

Q. You mean there has been such production in this plant that you have never had a girl go out of the plant for more than one day?

A. The girls I have had have always been back the next day. Always the front makers, those girls.

Q. So there has always been a constancy, and such uninterrupted of production—

MR. GEROFISKY:

I object to that. This witness is saying one thing, and Mr. Moscovitz is saying another thing. There is no testimony about production here. If he is on the practice that existed between Mrs. Evans, the witness, and any girl that she told to leave for the day, there is no more work for her, all right. But if he wants to go into production, I submit this witness knows nothing much about production, and has not been asked questions about it.

MR. MOSCOVITZ:

Will Mr. Gerofsky agree there should be stricken from the record his examination of this witness on whether or not there was slow production, or a lot of production during the months of August and September.

MR. HALPERN:

We have not mentioned that with this witness.

MR. MOSCOVITZ:

Oh yes. Mr. Gerofsky asked this witness whether or not in the months of August and September work was slow. That, it seems to me, is a matter of production. If Mr. Gerofsky will do that, I will withdraw my question. If he doesn't, I submit my question is proper on cross examination.

MR. GEROFISKY:

I stand on my objection.

TRIAL EXAMINER GATES:

Inquire.

MR. GEROFISKY:

So far as this witness is concerned, she is testifying to a practice that has been carried out at that plant, that if a girl had no—if there was not sufficient work in that particular girl's line, on any given day the girl would be told to come back another day. It so happened the girls she spoke to would return a subsequent day, and there was work again for them.

MR. MOSCOVITZ:

That may be true. That is one point. Of course, the other point is the accuracy of her statement that during the month of August and September business was slow.

TRIAL EXAMINER GATES:

Go ahead.

BY MR. MOSCOVITZ:

Q. Then, as I understand your testimony during the months of August and September work was slack?

A. Well, I can't say just exactly. I know right at that time, at the time of the strike there was not a lot of work to be given out, right those few days. I do remember that.

Q. So that in the few days immediately preceding the strike work became slow, is that what your testimony is?

A. Yes.

Q. But that before those few days there was plenty of work for the girls?

A. Well, I don't know just exactly how much. I know they were kept busy.

Q. Kept busy. And you are sure of that?

A. Well, as much as we had was divided among the girls.

Q. And it was only then in the few days preceding the date of the strike that work began to slacken off, right?

A. No, I could not say that.

Q. Well, now I thought that is what you had said. Now if you want to change that testimony do it now.

MR. GEROFISKY:

I don't think this witness wants to change any testimony, Mr. Examiner. What this witness wants to do is to explain herself.

BY MR. MOSCOVITZ:

Q. If you want to explain your statements, you do that now. I will permit you.

A. Well, whenever there was a slackness of the work which often occurs in most any business, the work is always divided among the girls equally. And when one certain line of work had given out those girls were told to come the next day when the other lot was started.

Q. That is the practice, isn't it?

A. Yes.

Q. That practice then was invoked in this plant in the few days preceding the strike?

A. It has always been a practice, Yes.

Q. Except for those few days preceding the strike all the girls were kept working, isn't that it?

A. Why, it was always the same. Not those few days. Those few days were no different from any other day.

Q. I understood you to say in the few days be-

fore the strike the work slowed down and girls had to be let go.

A. No, I don't think you understood me right.

Q. I see. Let me ask you all over again, since there has been some misunderstanding between us. When did work become slow in August and September?

A. Well, I don't remember just exactly how much work we had at any day, that is quite a long time ago to remember just how we worked it.

Q. Do you remember that throughout the entire months of August and September work was slow?

A. Well, I would not say that it was slow through all the months, but I do remember that there were times when it was slow.

Q. Now, do you remember when those times were? When it was slow in those months?

A. No, I can't recall just exactly.

Q. So that when you testified in the months of August and September business was slow, that statement is not entirely accurate, is that right?

A. All right. I don't remember just exactly how much there was at any one day.

Q. All right. On this question of work, had you ever before told Miss Santora that there was no more work for her on that day, that she should go home?

A. Many times, Yes.

Q. So that it was not uncommon for you to tell Santora to go home, that there was no more work?

A. It was not uncommon to tell any girl that.

Q. I am talking about Santora. Had you ever told her to go home because of lack of work?

A. Yes.

Q. I know this has been a long time ago, but do you recall when the last time was that you told Santora that before the day when she actually went home which was the day of the strike?

A. No, I can't remember any dates. I would not be able to remember them.

Q. That would be a matter of record, is that it?

A. That would be shown on her time card when she finished.

Q. Do you recall who gave Santora her work that day when she was last employed?

A. I did.

Q. Do you recall what kind of work it was?

A. As I remember, I think it was—I have forgotten just exactly what we were working on, but as I recall it now, I think it was skirts. I am not sure.

Q. Did you give her a bundle of work that morning?

A. Yes.

Q. Do you recall what time of the day it was when you spoke with her about going home?

A. I don't recall exactly what time it was. It was some time in the morning. I know when she had finished her work.

Q. Was her job completed when you spoke with her?

A. Yes.

Q. Had she come to you for more work?

A. Yes.

Q. What did you say to her?

A. I said there would be work in the morning.

Q. What kind of work?

A. Well, the regular work.

Q. Why wasn't there any work then? Why would there be work in the morning and not at that time?

A. Because we had not started another lot. There was not a lot ready at that time.

Q. Another lot of skirts you mean?

A. Yes.

Q. What did she say when you told her that?

A. She did not make any reply at all.

Q. Did you tell any other girls at that time that they should go home and that there would be work for them in the morning?

A. I am not sure whether there was anyone else who got through at that time or not. I know if they were, that line of work had given out.

Q. Fanny, what kind of work did she do?

A. I think she was at that time—now it is changed, but at that time I think she was putting belts on the skirts.

Q. Did she work next to Santora?

A. Yes.

Q. Did she work on the same bench?

A. Yes.

Q. Were they partners?

A. No, I would not say they were partners.

Q. Do you remember what Fanny's last name was?

A. Ackerman, I think.

Q. Fanny Ackerman?


A. Yes.

Q. Is she a Somerville girl?

A. I think she is a Plainfield girl.

Q. Does she still work for the company?

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A. Yes.

Q. What does she do now?

A. She is still on a machine.

Q. What kind? The same kind of work? Is she an operator?

A. She is an operator.

Q. Did she go out on strike?

A. No.

Q. She worked all during the strike, didn't she?

A. Yes.

Q. Steadily? She was not laid off?

A. No, she was not laid off.

Q. Do you know how long Fanny has been working for the company?

A. I don't remember just how long it is.

Q. You did not get her her job, did you?

A. No.

Q. Do you know her at all after working hours?

A. No, I don't.

Q. How did she tell you that she lived in Plainfield, or is it something you just found out from the record.

A. Well, I know she drives a car from Plainfield. She has a Plainfield license on it.

Q. Was she doing the same kind of work on the day Santora was told to go home that Santora was doing?

A. No, she was putting the belts on.

Q. Had you given her work that day too?

A. Yes.

Q. Do you recall whether or not you talked with Fanny that morning?

A. Nothing other than the work, nothing except in regard to the work.

Q. That may be so. You do recall then that you did speak with Fanny that morning?

A. Just in regard to her work, that is all.

Q. Do you recall when you spoke with her in relation to the time when you told Santora that there was no further work for her?

A. I did not speak with Fanny about that.

Q. You did not speak with Fanny about her work?

A. About her own work. Yes.

Q. That is right. Now, when did you speak with Fanny about her own work in relation to the time when Santora was finally told that there was no work, no more work for her? Do you understand my question?

A. No, I do not.

Q. Tell me when it was that you spoke to Fanny about her work?

A. Well, I don't understand just exactly what you mean by that.

Q. You said you spoke with Fanny about her work.

A. You are talking to the girls constantly about their work. When you are giving them work, you are watching their work, you are speaking to them constantly really, not in specified times.

Q. Were you speaking then with Fannie that morning constantly about her work?

A. Well, at different times you would speak to a girl about work. No more Fanny than any girls.

Q. Was Fanny a member of the Union?

A. I do not know.

Q. She never told you?

A. No, she did not.

Q. Did Fanny ever speak with you about the Union?

A. No, she did not.

Q. Nor you with her?

A. No.

Q. Did Fanny ever tell you that the girls were contemplating going on strike?

A. No, she did not.

Q. Did you know that the girls were contemplating going on strike that day?

A. That day, Yes, we had heard it that day.

Q. From whom did you hear it?

A. I said before I did not remember just exactly who it was that spoke of it.

Q. Was it one of the workers?

A. I don't remember. I don't remember who it was.

Q. Are you sure it was not Fanny?

A. No, I know Fanny was not talking to me.

Q. Are you sure it was not Fanny?

A. Yes, I am sure it was not.

Q. How are you sure it was not Fanny when you don't remember who it was who told you.

A. Well, I don't remember.

Q. So that it might have been Fanny?

A. I would not say it was Fanny.

Q. You did not say it was, would you say it was not Fanny?

MR. GEROFKY:

I submit this witness has endeavored to answer. She has given the best of her recollection. She says she can't recall.

MR. MOSCOVITZ:

If she says she can't recall whether it is

Fanny or anyone else, all right. I did not understand that to be her answer.

BY MR. MOSCOVITZ:

Q. Is that your answer?

A. I said I did not remember who it was that spoke to me about it.

Q. So that when Anna Santora testified that Fanny had a conversation with you about the strike on that day, you can't say, can you, that Santora's testimony on that point is not accurate, can you?

A. I don't recall any such conversation.

Q. You can't say that that testimony by Santora is inaccurate, can you?

MR. HALPERN:

If it please the Court, I object to the question and ask Mr. Moscovitz to read the entire testimony of Santora, because there is something in that answer which will refresh this witness's recollection, that she did not speak to Fanny.

MR. MOSCOVITZ:

I will read it.

BY MR. MOSCOVITZ:

Q. The answer Miss Santora gave, Miss Evans, is this: It is on page 304 at the bottom.

"September 18th, just before the strike, see, they thought I was going to blow the whistle for the girls to get up and Mrs. Evans, she told me there would not be any more work for me because the girls next to her told her that I told her she was going to blow the whistle, so she got up and told the forelady, and I heard her because I was in back of her.

Q. Who was the forelady?

A. Mrs. Evans.

“Q. Who was the girl?”

“A. Fanny.”

A. I don't remember. I never heard anything about a whistle I know that. It would have sounded ridiculous to me.

Q. You never heard anything about a whistle?

A. No.

Q. Would you say that Fanny on that day did not tell you that the girls were going on strike?

A. Well, I don't remember who spoke of the strike, but I do remember that no-one said that Anna Santera was called out on strike, because I had no idea of it.

Q. You just don't remember then about the whistle?

A. I don't remember anything about the whistle at all.

Q. Is it the practice for the girls in your plant to come back themselves after they have been told to go home, or is it the practice for you to say go home, and we will call you when we want you.

A. No, the girls always come back the next day.

Q. Yes. But what is the practice in that regard, is it that they always come back?

A. Yes.

Q. Is there any practice that you tell the girls when they go, girls, go home, we have no more work for you, it may be a day or it may be two. But we will get in touch with you when we have work.

Do you tell them that?

A. No.

Q. Never?

A. I have never had that happen.

Q. What?

A. There are none of my girls that ever had to

be sent home that way. Those girls are all front makers and they all did their share of the work.

Q. How long had you known Fay Katz? That is, before she was finally last out of the employ of the company?

A. I don't remember how long she did work there.

Q. She worked under you, didn't she, at the time she was last employed?

A. Only just the part of the time, that is all.

Q. Was she working for you the last day she worked there?

A. No, I don't think she was. As I remember, I don't think she was. I am not positive.

Q. Did you tell her that there was no more work for her?

A. No, I don't remember telling her that.

Q. You don't recall that?

A. No, I don't.

Q. As I recall your testimony, you testified that you did not speak with her at any time about the Union?

A. No, I never spoke with Fay Katz.

Q. You never spoke with her at all?

A. I don't remember speaking with Fay Katz anyway. She was not really one of my girls that I took care of most of the time.

Q. Let me ask you whether or not you ever attended any meetings where the Union question was discussed.

A. No, I did not.

Q. Either in or out of the plant?

A. No, I did not.

Q. You were in the plant at the time Mr. Hawley spoke, weren't you?

A. Oh yes. Mr. Hawley came in and spoke.

Q. The Mayor?

A. Yes.

Q. The Sheriff?

A. Yes, they were all there speaking.

Q. That was sometime before the strike, wasn't it?

A. I don't remember just when it was.

Q. It was before the strike though, wasn't it?

A. Yes, I think it was.

Q. Did you attend those meetings?

A. Well, I was there, Yes.

Q. Did you have any thing to do with getting the girls to go in to hear the speeches?

A. Well, it was given right where the girls were working.

Q. Did you turn the power off or did someone else do it.

A. I don't remember whether the power was turned off or whether it was after work. I don't remember just when it was.

Q. But you were there.

A. I was there.

Q. Did you know these men were coming?

A. No, I did not.

Q. So it was unknown to you when they came in that they were going to speak to the girls?

A. Yes.

Q. Weren't you notified by anyone before to see to it that the girls were there?

A. No, I was not.

Q. Weren't you notified by anyone before that your production would be stopped or interfered with by this speech, and you should make preparation?

A. No.

Q. How did you first learn that they were going to be there for the purpose of making a speech?

A. When they came in.

Q. Mr. Fainblatt came in with them, didn't he?

A. I think Mr. Fainblatt came up.

Q. It was upstairs?

A. Yes.

Q. On the second floor?

A. On the second floor.

Q. How about the people who were on the first floor, weren't there people working on the first floor?

A. There may have been a few girls trimming, I am not sure.

Q. Did you go down to get them to come up?

A. No.

Q. Was Mr. Ruby up there too?

A. Yes.

Q. The whole shop then, is that it?

A. Yes.

Q. Did you have anything to say at that meeting?

A. No, I did not.

Q. Then, you knew at that time that there was some Union problem in the plant, didn't you, at the time of these speeches?

A. Well, I could not say that I knew there was a Union problem. I did not exactly know.

MR. MOSCOVITZ:

That is all.

TRIAL EXAMINER GATES:

We will take a short recess.

(The hearing recessed for a few minutes.)

(Witness Excused.)

MR. GEROFISKY:

I will call Miss Fainblatt.

MARJORIE FAIBLATT resumed the stand as a witness by and on behalf of the Respondents, and having been previously duly sworn, was examined and testified as follows:

Direct Examination

BY MR. GEROFISKY:

Q. What is your full name?

A. Marjorie Fainblatt.

Q. And where do you live, Miss Fainblatt?

A. Ridge Road, Douglaston, Long Island.

Q. Were you ever associated with the plant in Somerville known as the Somerset Manufacturing Company?

A. Yes.

Q. In what capacity?

A. As the owner.

Q. Did you establish that plant as the owner?

A. I did.

Q. And when was that?

A. About the end of August, 1935.

Q. '35?

A. '34, rather.

Q. Now, in establishing out there in Somerville the Somerset Manufacturing Company, did you file a trade name certificate?

A. I did.

Q. One with the County clerk of the County of Somerset and the other a copy, with the Secretary of State of the State of New Jersey?

A. I believe so.

Q. Were you the sole owner of that business?
Known as the Somerset Manufacturing Company?

A. I was.

Q. Was there at the time that you established
in August, 1934 another plant operation in the same
building?

A. There was.

Q. And do you know the name of that operation?

A. Somerville Manufacturing Company.

Q. And do you know who the owner of that
plant was?

A. Benjamin Fainblatt.

Q. Do you know whether or not there was a
trade name certificate filed with the County Clerk
and the Secretary of State?

A. I believe so.

Q. And did such trade name certificate, to your
knowledge bear the name of Benjamin Fainblatt
as the owner of the Somerville Manufacturing Com-
pany?

A. It did.

Q. Was that established before you came there?

A. It was.

Q. How long before you went into Somerville
was the Somerville Manufacturing Company there?

A. Oh, just a few weeks before.

Q. And that was in the same month of August,
1934?

A. I believe so, Yes.

Q. Now, what did you manufacture at the Som-
erset plant?

A. Sportswear.

Q. And was your operation in that plant in conjunction with the Somerville Manufacturing Company, the same machinery?

A. The same machinery, Yes.

Q. Who owned that machinery?

A. I did.

Q. Was the Somerville Manufacturing Company using that machinery before you came out there?

A. They did.

Q. Did Benjamin Fainblatt have any association with the Somerset Manufacturing Company?

A. Only as my manager.

Q. He was not the owner of the Somerset?

A. He was not.

Q. Did he operate on the premises there as your manager?

A. He did.

Q. Did you visit the plant?

A. I did.

Q. How often?

A. On the average of once a week.

Q. And did you do any work when you went out there?

A. Just what do you mean?

Q. When you visited out there, what did you do?

A. Examine to see whether my work was being taken care of properly.

Q. And when you started the Somerset Manufacturing Company, did you have a record of the number of employees you had?

A. Yes, in the payroll books.

Q. And is that book here?

A. I believe it is.

Q. How many employees did you have to commence with?

A. Thirty, I have here.

BY MR. MOSCOVITZ:

Q. What is that date?

A. This says August 25th.

BY MR. GEROFKY:

Q. What year?

A. 1934.

Q. And are you the owner of the Somerset Manufacturing Company today?

A. No, I am not.

Q. Have you disposed of your interest in the Somerset?

A. I have.

Q. And when did that take place?

A. At the beginning of the year.

Q. Do you remember the month?

A. January.

Q. Who became the owner?

A. Benjamin Fainblatt.

Q. Was there a bill of sale given?

A. There was.

Q. And was there a purchase price paid for it?

A. Yes, there was.

Q. By Benjamin?

A. Yes.

Q. And you have no connection as an owner with the Somerset Manufacturing Company today?

A. I have not.

Q. That status has been so since January, 1937?

A. That is right.

Q. Did Benjamin have any association as an owner in the Somerset from the date of its founding to January, 1937?

A. He did not.

Q. You stated that the Somerville operated at the same time, and in the same plant as the Somerset operated?

A. That is right.

Q. Were there two separate payroll books, each company maintaining its separate payroll?

A. There was.

Q. Were the funds of the Somerville Company mingled with the funds of the Somerset at any time?

I mean, did you establish separate accounts; the Somerset had its own account, and the Somerville having its own account?

A. Yes.

Q. With respect to the pay, did the Somerset make any payments of wages at any time in behalf of the Somerville Manufacturing Company account?

A. Not that I know of.

Q. Well, did it?

A. No.

Q. And did the Somerville Manufacturing Company then owned by Benjamin Fainblatt ever pay any of your employees who worked, if they did, for the Somerset?

A. They did not.

Q. They were separate establishments entirely, is that so?

A. Right.

Q. Were they working on different types of garments?

A. Yes, in a way.

Q. Now, Miss Fainblatt, how long did the Somerville Manufacturing Company operate?

A. Until February, some time in February.

Q. What year?

A. 1935.

Q. Did it discontinue business activity at that time?

A. It did.

MR. MOSCOVITZ:

At Somerville?

MR. GEROFISKY:

Yes.

BY MR. GEROFISKY:

Q. Do you know that of your own personal knowledge?

A. My own personal knowledge, Yes.

Q. You have seen the books?

A. Yes.

Q. Do you take care of the books for your father from time to time?

A. Yes. I don't know just what you mean did I take care of them.

Q. Do you make entries and check entries in the books, supervise the management of those books?

A. The accountant took care of the books, so far as the payroll.

Q. In your own business, did you?

A. So far as the payrolls are concerned.

Q. Do you have the record of the Somerville Manufacturing Company that would indicate the last payroll it had?

A. I think so.

It was February 8, 1935.

Q. Are there any other payroll entries after that date?

A. Not beyond that date.

Q. And the reason that you assigned was that the plant discontinued business?

A. Yes.

Q. And upon determination of activities by the Somerville, did Benjamin continue as the manager of the Somerset plant for you?

A. He did.

Q. Was he engaged as a regular employee?

A. As a manager, he would be.

Q. Did he receive a salary from you?

A. He did.

Q. Miss Fainblatt, have you ever spoken with Mr. Harry Posner with respect to Union activities at the Somerville Manufacturing Company plant?

A. I did not.

Q. Did Mr. Posner ever communicate with you?

A. He did not.

Q. Did any person speak with you—
Withdraw that.

To your knowledge, was an election ever held at the plant of the Somerset Manufacturing Company to determine for the purpose of selecting a representative by the employees?

A. There was not.

Q. Now, going back to August 14, 1935, the week ending August 16, 1935, how many employees did you have in that week?

MR. MOSCOVITZ:

That is in what, the Somerset?

MR. GEROFKY:

In the Somerset. There is no other company in existence.

I believe the record will indicate a stipulation that the Somerville went out of business in February 1935. Also your intermediate report.

A. Fifty eight at the time.

BY MR. GEROFISKY:

Q. Fifty eight employees?

A. Yes.

Q. Are you including in that list those persons who are engaged in an executive capacity or supervisory capacity?

A. No, I am not.

Q. And the following week, how many were employed?

MR. MOSCOVITZ:

Just a minute, before you answer.

Off the record.

(There was a short discussion off the record.)

TRIAL EXAMINER GATES:

On the record.

BY MR. GEROFISKY:

Q. That is the week ending August 23rd?

A. About sixty.

Q. Sixty?

A. Yes, sixty.

TRIAL EXAMINER GATES:

Let's get those two dates straight.

The first one you testified to was what?

MR. GEROFISKY:

The week ending August 16th.

A. August 16th, I believe.

MR. GEROFISKY:

And the second is the week ending the 23rd.

BY MR. MOSCOVITZ:

Q. Does this last figure exclude supervisory employees?

A. Yes.

Q. Foreladies and people of that sort?

A. Yes.

BY MR. GEROFSKY:

Q. Sixty?

A. Yes.

TRIAL EXAMINER GATES:

I think this is all in the record, unless you just want to straighten out something. It has all been covered in considerable detail by photostatic copies, by, I imagine, the same records Miss Fainblatt is testifying from, and also the testimony of Mr. Fainblatt.

MR. GEROFSKY:

Of course, Mr. Fainblatt was the Board's witness. Here we have the owner of the plant with the records, and I am merely asking for the numbers.

I am not going through the names or anything. In view of a stipulation made between counsel of the Board and myself that the photostatic copies be kept out of the printed record, I would like to have these numbers in the record.

TRIAL EXAMINER GATES:

Well, if you are going to put it in this way, irrespective of the stipulation, I will keep the record open, and we will put in the photostat sheets which are already exhibits.

I don't think the testimony as to the numbers mean anything without reference to names and jobs they were on.

As I recall those payrolls, they show people on the payrolls who did not work and that sort of thing.

MR. GEROFSKY:

I would like to get the numbers in the record. There is nothing in this transcript of record to indicate the number of employees so as to really determine whether or not there were a majority of the employees who went out or who joined the Union, how long they had been employed, whether or not there was just one day.

TRIAL EXAMINER GATES:

Mr. Fainblatt testified there were sixty-one employees during the week ending August 16th, plus a bookkeeper, two cutters, and one finisher or something like that, and five general workers.

He gave testimony on the number of employees for those six weeks.

If you are going to go into that, I think we ought to check the testimony there and see if you wish to let that stand or do you want to put in some more. I just don't want to have the record cluttered up here.

MR. HALPERN:

Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER GATES:

On the record.

If you will look in Mr. Fainblatt's testimony, beginning at page 392, you will find in those pages and following he testifies as to this same line of testimony. And if you wish to contradict that testimony, I will consider that.

On the other hand, if that is substantially accurate, I see no point in going on through it.

It has all been covered in considerable detail, in discussion as to the jobs and the number of employees.

MR. GEROF'SKY:

Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER GATES:

On the record.

I don't intend to take cumulative testimony on this point. That is my only contention. If you wish to make an offer of proof, I will consider that. But this has already been covered in great detail, and if there are inaccuracies there, I am perfectly willing to have them corrected.

But I don't see any point in going clear over this again.

MR. GEROF'SKY:

Are you ruling in the matter to prohibit us from offering this testimony?

TRIAL EXAMINER GATES:

I think my statement is clear. I don't intend to take purely cumulative testimony.

MR. GEROF'SKY:

I submit it is not cumulative. In the first place, Benjamin Fainblatt has not been called as a witness by the Respondents. He was subpoenaed here by the Board to testify in the Board's behalf, and with respect to Benjamin Fainblatt's testimony, that he was not in charge of the books, I don't believe there is anything on the record to indicate that he had anything to do with the books.

I am offering now the person who is the reg-

istered owner and actual owner of the Somerset Manufacturing Company, and the person who visits the plant at least once a week, and goes over this payroll and he is the supervisor in charge of the payroll, and payroll entries. And the only person who is best fitted to testify in this matter of employment.

TRIAL EXAMINER GATES:

Well, you can go ahead, but if you run into cumulative testimony, Mr. Gerofsky, I am not going to permit it. I will stop you, or I will entertain a motion to strike it if it gets to that point.

I am not going to preclude you from putting in anything that is pertinent.

MR. GEROFSKY:

I believe we were at the week ending the 23rd of August.

BY MR. GEROFSKY:

Q. You testified, I believe, that you had sixty employees that week?

A. Yes.

Q. Now, the following week, how many employees did you have in the plant? That is the week ending the 30th.

A. Fifty two.

Q. Fifty two?

A. Fifty two.

Q. Fifty two?

A. Yes.

Q. Now, do you have an entry in your books for the week ending August 30th indicating whether or not Elysabeth Shoaka was in your employ?

A. She did not attend that week.

Q. Is she listed as an employee?

A. She is listed on that month's schedule.

Q. She is listed as an employee?

A. Yes.

Q. Is there an entry indicating whether or not
Jean Collenda—

Withdraw that question.

Do you have an entry indicating when Teresa
Yemma last worked at the plant? Will you refer
to August 20th?

A. August 21st.

Q. Is that the last day she worked?

A. That is the last day she was there. Not an
entire day.

Q. Beg pardon?

A. Not an entire day.

Q. What time of the day did she leave?

A. I could not say. She is listed here as five
hours.

Q. Five hours?

A. Yes.

Q. Is she carried over the following week there?

A. She is listed on a monthly scale there.

Q. She is?

A. Yes, there are no entries as far as time is
concerned.

Q. Is she listed for the week ending September
7th?

A. Yes.

Q. Is she listed for the week ending September
14th?

MR. MOSCOVITZ:

Is that Yemma?

MR. GEROFISKY:

Yemma.

A. There is just that particular number of hers is vacant.

Q. It is vacant?

A. Yes.

Q. Left blank?

A. That is right.

Q. By that time, she had been out two weeks?

A. Yes.

Q. Did you ever discharge Teresa Yemma from employment?

A. No.

Q. Did you ever discharge Elysabeth Shoaka?

A. No.

Q. Marie Gecik, was she employed on August 20, 1935?

A. Yes.

Q. She was?

A. Yes.

Q. When was the last day she worked?

A. On the 21st.

Q. On the 21st?

A. Yes.

Q. How many hours did she put in on that day?

A. She worked a full day?

Q. She did work a full day?

A. Yes.

Q. And what was her number on the payroll?

A. No. 25.

Q. A full day was how many hours?

Withdraw that question.

I show you a card purporting to be a time card and No. 25 under the name of Mary Gecik, showing time for the week ending August 23, 1935, and ask you if that is the time card of Mary Gecik?

A. As far as I know, it is.

Q. It is?

A. Yes.

Q. What time did she punch out on that day?

A. One minute after five.

Q. Is that the closing hour of that plant ordinarily?

A. Yes, it was at that time.

Q. And what day was that, the exact date?

A. The exact date would be the 21st.

Q. What day of the week was it?

A. It would be a Wednesday.

MR. GEROFISKY:

I wish to have this card marked for identification.

(Thereupon the document above referred to was marked Respondents' Exhibit No. 1 for identification.)

BY MR. GEROFISKY:

Q. Now, Miss Fainblatt, I show you card No. 16 under the name of Teresa Yemma, indicating the time week ending August 23, 1935. Is that the card of Teresa Yemma, an employee?

A. Yes.

Q. How late did she work on her last day at the plant?

A. 1:52.

Q. And it was—the day was when?

A. On a Wednesday.

BY MR. MOSCOVITZ:

Q. What date.

A. The week ending August 23rd.

BY MR. GEROFISKY:

Q. That was August 21st, by the calendar?

A. Yes.

(The time card of Ethel Rice was marked Respondents' Exhibit No. 2 for identification.)

BY MR. GEROFISKY:

Q. Was Ethel Rice an employee of the plant on August 21, 1935?

A. May I ask a question?

Q. Her number?

A. Yes, her number.

Q. Her number is 45, I believe.

A. Yes, she was.

Q. And when did she last work?

A. The week of August 16th.

Q. Do you have her entered in the week ending August 23rd?

A. We have.

Q. How many days did she work in that week?

A. She worked a total of 35 $\frac{3}{4}$ hours. That is a part of each day.

Q. How many hours did you say?

A. Thirty five and three quarters.

Q. Is this her time card, bearing No. 45?

A. Yes.

Q. What was the time she left as indicated?

A. On Friday, one minute past four.

MR. GEROFISKY:

I wish to offer that for identification.

(Thereupon the document above referred to was marked Respondents' Exhibit No. 3 for identification.)

BY MR. GEROFISKY:

Q. Was Fay Katz in your employ for the week ending September 7, 1935?

A. She was.

MR. MOSCOVITZ:

What was that date?

MR. GEROFISKY:

The week ending September 7, 1935.

BY MR. GEROFISKY:

Q. Was she—did she put in any time the following week, ending the 14th?

A. She did.

Q. When was the last day she worked in that week?

A. On Wednesday. I have not got the exact date.

Q. Would it be the 18th?

A. Not if the week ended September 14th.

Q. The 11th?

A. Yes, it would be the 11th.

MR. GEROFISKY:

I believe you will agree with me that would be the 11th. I am looking at a calendar here.

BY MR. GEROFISKY:

Q. Did she put in any time with the Company on the following week?

A. It does not show any time the following week.

Q. What is the last day she is listed there as having worked?

A. The 11th.

Q. Wednesday the 11th of September, 1935?

A. Yes.

Q. I show you a card marked No. 13, indicating her employment number, Fay Katz's that is, for the week ending September 14, 1935 and ask you if that is Fay Katz's time card.

A. Yes.

Q. And what is the last time entry on that card?

A. Ten o'clock.

Q. What day?

A. On Wednesday.

Q. That is Wednesday, the 11th?

A. The 11th.

Q. Of September, 1935?

A. Yes.

MR. GEROFISKY:

I ask that be marked for identification.

(Thereupon the document above referred to was marked Respondents' Exhibit No. 4 for identification.)

BY MR. GEROFISKY:

Q. How many employees are listed as having devoted time to their work the week ending September 7, 1935?

A. Fifty two.

Q. Now, in that number of fifty two, you are giving just those girls who gave time or put in time in the plant for the week ending September 7th?

A. Yes.

Q. Were there some girls listed as employees but who were out that week still carried as employees by you?

A. Yes, there are other names there, but she shows no time.

Q. And how many persons are there listed as employees but who did not put any time in that week?

A. Three that I can find.

Q. Three?

A. Yes.

Q. That then lists a total number of employees on that weekly payroll, weekly listings of fifty five

three in addition to the fifty two who did put in time, is that right?

A. Right.

Q. Can you give me the names of those three persons?

A. There was Lorraine Vones.

Q. Was she also known by another name?

A. As far as I know, I think she was married.

Q. Is she the person known as Lorraine Heitz?

A. I think she was.

Q. And who were the other two?

A. Angelina Matteis, Elysabeth Shoaka.

Q. Are those three persons named the three persons specified in the charge?

A. There is Elizabeth Ethel Rice too, here.

Q. Ethel Rice too? That makes four, is that right?

A. That is right.

Q. Anyone else?

A. Mary Gecik.

There is a Lucy Pascale, Teresa Yemma.

Q. This is the week ending September 7th?

A. The 7th.

Q. They are still carried as employees?

A. Their names are listed here.

Q. That indicates, does it not, that they are employees of the plant at that time?

A. Yes.

Q. Anyone else?

A. That is all.

Q. And you gave me besides the number of fifty-two, you named six others, did you not, as having been on the payroll entirely? Give me your entire list of employees, those who put in time the week

ending the 7th, and those who are still employees according to your books but did not put any time in.

A. Sixty-three.

Q. Sixty-three?

A. Yes.

Q. Then you had sixty three employees for the week ending September 7th on your payroll records, is that right?

A. Right.

Q. And that is your only list of employees that you have?

A. That is my only list.

Q. Now, in the week ending September 14th how many employees were listed in the employ of the company, those who put in time, and those who were absent from work.

A. May I have that date again?

Q. The week ending September 14, 1935.

A. Fifty-four.

Q. Fifty-four?

A. Yes.

Q. Does that give me the entire list of the names of your employees?

A. The names that I account for.

Q. For that week?

A. Fifty-six.

Q. Fifty-six?

A. Fifty-six.

Q. Any of those of that number, are any of those persons engaged in an executive capacity?

A. No.

Q. They are all engaged in production?

A. Yes.

BY MR. MOSCOVITZ:

Q. That is fifty six on September 14th?

A. Yes.

MR. GEROFISKY:

The week ending September 14th.

BY MR. MOSCOVITZ:

Q. Is that the number of persons, who were employed that week?

A. They might not have been working, but their names are here. I counted names, not time.

BY MR. GEROFISKY:

Q. Were they employees of the company as of that day?

A. Yes.

Q. If a person was discharged from employment, would the name be stricken from the list?

A. His name would not appear.

Q. If a person was discharged?

A. Yes.

Q. And if a person was laid off momentarily, due to a slackening in work, for instance, the testimony of one of the employees indicates that she was laid off when she finished her bundle, and told to come back the next day.

Under circumstances of that sort, would they be carried as employees?

A. They would be carried as employees. Yes.

Q. They were still in your employ?

A. Yes.

Q. Now, on the week ending September 21st, how many employees did you have, including those who put in some time and those who did not?

A. Fifty-four.

Q. Fifty-four?

A. Yes.

Q. And that is the week in which the strike occurred at the plant?

A. Yes.

Q. Going back to the week ending September 7th, is Elysabeth Shoaka listed as an employee for that week?

A. You do not happen to know her number?

Q. No. 72, will that help you?

A. For what week did you want it.

Q. September 7th.

Go back to the week preceding August 30th, the week ending August 23rd.

A. August 23rd, she worked that week, part of that week.

Q. Did she work the following week, the week ending August 30th?

A. No.

Q. Did she work the week ending—
Was she listed there as an employee?

A. Yes.

Q. Did she work the week ending September 7, 1935?

A. No, she did not.

Q. Is she listed as an employee?

A. Yes.

Q. Did she work the week ending September 14, 1935?

A. No.

Q. Is she listed as an employee?

A. Her name does not appear.

Q. Her name does not appear?

A. No.

Q. But you carried her for several weeks there after as an employee?

A. Yes.

Q. Now, take Lorraine Heitz, who is also known as Lorraine Vones, that latter name being her single name, was she listed as an employee putting in some time the week ending August 23rd?

A. She worked part of the week of August 23rd.

Q. And from your records, did she work the week ending August 30th?

A. She did not.

Q. Was she listed as an employee?

A. Yes.

Q. Did she work the following week, September 7th?

A. She did not.

Q. Was she listed as an employee?

A. Yes.

Q. And was she listed as an employee the week ending September 14th?

A. No.

Q. Now, Ethel Rice, was she employed in the week ending August 23rd?

A. No.

Q. Is her name on the list?

A. Yes.

Q. She did not put in any time that week?

A. I have nothing here.

Q. Is she carried as an employee there?

A. Yes.

Q. And the week ending August 30th, was she listed as an employee?

A. Yes.

Q. And will you see if she is listed for the week ending September 7th?

A. Yes.

Q. Is she listed as an employee the week ending September 14th?

A. No.

Q. And you have already testified, have you not, that—see if I am right—that if a person was discharged their name would be stricken off the list, the employment list the week that such discharge occurred, is that right?

A. Well, there was not a new time card made out for her.

Q. Her name would not appear on the payroll list at all, would it?

A. No.

Q. Isn't that right?

A. That is right.

Q. Angelina Matteis, No. 75, I believe, the week ending August 23rd. Was she an employee of the plant?

Q. Did she put in any time that week?

A. Yes.

Q. How many hours?

A. Eighteen hours.

Q. What was the last day of that week that she worked?

A. It was on a Wednesday.

Q. That was the week ending August 23rd?

A. It is.

Q. What time of the day did she leave?

A. It shows she just worked two hours.

Q. Two hours?

The week following, that is August 30th, was she still listed as an employee?

A. She was listed, but there is no time shown.

Q. She did not put in any time?

A. No.

Q. Did you have her listed as an employee the following week, September 7th?

A. Yes.

Q. Did she put in any time?

A. No.

Q. September 14th, was she listed as an employee?

A. No.

Q. Fay Katz, was she an employee of yours in the week ending August 23rd?

A. Yes.

Q. Did she put any time in that week?

A. Yes.

Q. How many hours?

A. Twenty-nine hours.

Q. And was she listed as an employee on the following week ending August 30th?

A. Yes.

Q. Did she put in any time that week?

A. Forty hours.

Q. And was she listed as an employee on the week ending September 7th?

A. Yes.

Q. How many hours did she put in that week?

A. Seventeen and a quarter.

Q. Was she listed as an employee for the week ending September 14th?

A. Yes.

Q. How many hours did she put in that week?

A. Nine.

Q. What days of that week did she work?

A. Monday, Tuesday, and Wednesday.

Q. The week ending September 14, 1935?

A. Yes.

Q. And how many hours did she work on Wednesday?

A. Two.

Q. Two hours?

A. Yes.

Q. Is she listed as an employee in the week ending the 21st of September?

A. She is listed, but there is no time shown.

Q. The strike occurred on September 17th?

A. Yes.

Q. Now, Mary Gecik, going back to her record, was she listed as an employee in the week ending August 23rd?

A. Yes.

Q. Did she put in any time that week?

A. Up until Wednesday.

Q. Is she listed as an employee the week ending August 30th?

A. Yes. No time shown.

Q. Beg pardon?

A. She is listed.

Q. Any time?

A. No.

Q. What week was that again?

A. August 30th, or August 23rd.

Q. When was the last week that Mary Gecik was listed?

A. The week ending August 23rd. She did not work a full week.

Q. Did she put in any time the following week, the week ending August 30th?

A. No.

Q. Was she still an employee of the company?

A. Yes.

Q. Did she put in any time the week ending September 7th?

A. No.

Q. Was she still an employee of the company from the company's records?

A. Yes.

Q. And the week ending August 14th, was she still an employee from the company's records?

A. August 14th or 16th?

Q. The week ending August—September 14th.

A. No, her name does not appear.

Q. Her name does not appear?

A. No.

Q. So that if Mary Gecik states that she worked until August 29, 1935, she was not correct, was she? That is, actually putting in time?

A. No.

Q. Were you at the plant the day the strike occurred?

A. I was not.

Q. Do you have records indicating the number of persons who went on strike at the time?

A. Only by the hour that they left.

Q. And did you prepare a list of those who went out on strike?

A. I believe there was a list prepared.

Q. That list was taken from your records?

A. Yes.

Q. Is this the list you prepared, which I hand to you of those girls who walked out?

A. I think that was the list prepared at the time.

Q. And will you count for me the number of girls from your record who walked out?

A. Twenty.

Q. Twenty girls went out on strike?

A. Yes.

Q. And that was on September 18, 1935?

A. Yes.

Q. And on that day, September 18, 1935 that was a Wednesday, how many employees were actually listed in your employment, those who were putting in time, and those who were listed as employees and have not reported that day.

A. Fifty-three.

Q. Fifty-three?

A. Yes.

BY MR. MOSCOVITZ:

Q. Fifty-three what?

A. Were listed.

BY MR. GEROFISKY:

Q. Fifty-three employees listed that day, persons still in your employ?

A. Yes.

Q. Of that number, how many actually reported for work that morning?

A. Forty-six.

Q. Forty-six actually reported for work that morning?

A. Yes.

Q. You stated that twenty persons went out?

A. According to that list.

Q. That left, I believe, twenty-six persons who remained in the plant and continued working, is that right?

A. Yes.

BY MR. MOSCOVITZ:

Q. Does that exclude supervisory people, that figure?

A. Yes.

BY MR. GEROFISKY:

Q. You are only giving me numbers all this time, concerning persons who are engaged in production?

A. Yes.

Q. Operators and the like?

A. Yes.

Q. Not Mrs. Evans nor Ruby, nor any of the supervisory employees?

A. No.

Q. Then you had twenty-six persons remain at the plant?

A. Yes.

TRIAL EXAMINER GATES:

We will recess at this time until two o'clock.

(Thereupon, at 1:00 o'clock p. m., a recess was taken until two o'clock p. m.)

After Recess

(Whereupon, the hearing was resumed, pursuant to recess at two o'clock p. m.)

MARJORIE FAIBLATT resumed the stand as a witness by and on behalf of the Respondents, and having been previously duly sworn, was examined and testified further as follows:

Direct Examination (Continued)

BY MR. GEROFISKY:

Q. Your records indicate the employment of

Mrs. L. Gutowsky, known as No. 56, on August 9, 1935.

MR. HALPERN:

Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER GATES:

On the record.

MR. GEROFISKY:

The Board has submitted a list of cards purporting to represent those girls in the employ of the Somerset Manufacturing Company who were members of the Union, and I am now offering testimony with respect to a number of those girls with the view of showing that a certain number were not in the actual employ of the company at a time when they might be considered as part of the unit designated to select a representative.

TRIAL EXAMINER GATES:

I think you ought to change that, Mr. Gerofsky, as to the Board having submitted a list, because I did not submit it.

If you are referring to the list that I handed to you, I did not submit it as proof of anything. I merely handed it to you for your convenience.

MR. GEROFISKY:

That is in view of the fact that we don't have available the cards which were admitted into evidence at the first hearing, are now at Philadelphia, at the Circuit Court as part of the docket there, and not available for our use.

BY MR. GEROFISKY:

Q. No. 56, an employee known as Mrs. L. Gutowsky—do you have her in your list as an employee on August 9, 1935?

A. Well, she entered that week of August 9, 1935.

Q. Does your record indicate that she was an employee following that week?

A. She does not show that she was employed the following week.

Q. Will you turn now to the next week following that?

A. Yes.

Q. When was the last day she worked?

A. May I have that calendar there? August 24.

Q. She was never thereafter in the employ of the Somerset Manufacturing Company?

A. No.

Q. Now, with respect to an employee, a former employee, No. 23, Pisane, will you refer to the records for the week of June 24th?

A. The records of the week ending June 28th?

Q. When was the last day she worked?

A. The 28th.

Q. Of June, 1935?

A. Yes.

Q. Do your records indicate that she was listed as an employee thereafter?

A. Yes.

Q. How long?

A. They continued to list up to the week ending July 12th. Up to the week ending July 12th.

Q. Thereafter, is she listed?

A. No.

TRIAL EXAMINER GATES:

Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER GATES:

On the record.

BY MR. GEROFISKY:

Q. Now, the week following her last day that you gave us as a listing, did she put in any time at the plant at all?

A. You mean July 12th?

Q. That is right.

A. No.

Q. And you carried her, however, as an employee for that week?

A. Yes.

Q. Thereafter she was no longer carried?

A. No.

Q. Now, with respect to Ethel Hicks, who bears employment No. 50, she was working at the plant on September 18, 1935?

A. Yes.

Q. When did she leave the plant, if she did.

A. The day of the strike.

Q. Was she one of those who went out on strike?

A. Apparently.

Q. Let me ask you this: Is Ethel Hicks employed at the plant today?

A. I don't know whether she is employed at the plant today, but she did return to work.

Q. She did?

A. Yes.

Q. Do you know when she returned?

A. She returned the week ending November 7, 1936.

Q. And she worked at the plant thereafter?

A. Thereafter, Yes.

Q. Now, with respect to Frances Cicero, who carried here No. 63, was she working at the plant on September 18, 1935?

A. What was that number again?

Q. Frances Cicero, No. 63.

A. Yes, she was.

Q. Did she leave that day?

A. She left the day of the strike. She worked a full day.

Q. She did work a full day?

A. Yes.

Q. And the strike was at what time of the day?

A. I believe it was about ten in the morning.

Q. Did she return to work the following day?

A. She did not.

Q. Did she ever return to work?

MR. GEROFISKY:

Will counsel agree she was the girl who testified here on the stand.

MR. MOSCOVITZ:

Yes.

MR. GEROFISKY:

And that she returned?

MR. MOSCOVITZ:

Yes.

A. I have no record of her, Mr. Gerofsky. She might be on one of the other sheets.

Q. Your records don't indicate it?

A. No.

MR. GEROFISKY:

We will let that pass for the moment. She was the person who testified yesterday.

MR. MOSCOVITZ:

So agreed.

BY MR. GEROFISKY:

Q. Carmella Recchia, she was in the employ of

the Somerset Manufacturing Company in September, 1935?

A. Yes.

Q. No. 27.

A. Yes.

Q. What was the last day she worked in September?

A. She went out the day of the strike.

Q. She is the young lady who testified here this morning that she joined with the strikers because of her fear of those about her who worked with her and lived in her neighborhood?

A. Yes.

MR. MOSCOVITZ:

I must object to Mr. Gerofsky's statement, Mr. Examiner. I will agree that she testified, but I trust we can eliminate the characterization made by Mr. Gerofsky of her state of mind.

MR. GEROFSKY:

She testified that she joined the strike because there were other girls who lived in her neighborhood.

TRIAL EXAMINER GATES:

I think we can let the record stand on her testimony rather than anything else.

BY MR. GEROFSKY:

Q. She has since returned to work?

A. Yes.

Q. Anna Lee, No. 29. Will you look at the record for September 7th, 1935 and tell me if that was the last day she worked at the plant?

A. Yes.

Q. Do your records indicate that she put in any time thereafter?

A. No.

Q. Referring to your record again, No. 41, Mary Kozar, September 11, 1935, do your records indicate that she worked on that day?

A. Yes, that was the last day.

Q. She never worked thereafter, from your records?

A. No.

Q. Sylvia Milano, who had No. 11 on your records, in the month of July, 1935, was she listed as an employee?

A. The week ending July 26th.

Q. Was she employed at the plant thereafter?

A. No.

Q. Did she give any time at the plant thereafter?

A. My records do not indicate.

Q. When was the last week that she was listed as an employee?

A. The week ending July 26th.

Q. Thereafter, she was out of your employ according to your records?

A. She really left on the 24th.

Q. Of July?

A. Yes.

Q. Mary Demko, No. 39. Your records indicate that she worked on July 26, 1935?

A. Yes.

Q. Did she work thereafter?

A. The records do not show.

Q. Did she work thereafter?

A. No.

Q. And was she any longer in your employ after July 26, 1935?

A. Her name is listed throughout August 9th, that was the last.

Q. August 9th is the last date she is listed?

A. Yes.

Q. The last day she actually worked was July 26th?

A. Yes.

Q. Now, your records indicate that a Mary Petrone ever worked at your plant?

A. I can't seem to find any record of her.

Q. Do you have any knowledge as to whether or not—

Withdraw the question.

You say her name does not appear on her records that was not in your employ?

A. I can't find her name.

Q. Would you say she was not in your employ if the records indicate her name was not listed as an employee?

A. I would.

Q. No. 85, Mimi Ross, do your records indicate that she worked in the month of July, 1935?

A. Yes.

Q. What was the last day that she did any work?

A. The week ending July 26th.

Q. 1935?

A. Yes.

Q. And thereafter did she do any work at the plant?

A. Her name appears up through August 9th, but she did not do any work.

Q. The last week her name appeared as an employee was August 9th?

A. Yes.

Q. 1935?

A. Yes.

Q. Wanda Kelly, she was one of those girls who went out on strike, September 18, 1935? Her number is 37.

A. Yes.

Q. And do your records indicate that she returned to work after the strike?

A. She did.

Q. And when did she return?

A. She returned the fifth month, 1936.

Q. That is May?

A. May.

Q. 1936?

A. Yes.

Q. She is still in the employ of the Somerset Manufacturing Company?

A. Yes.

Q. Now, Miss Fainblatt, did you trading as the Somerset Manufacturing Company purchase raw materials?

A. I did not.

Q. Did you as the Somerset Manufacturing Company sell any manufactured garments?

A. I did not.

Q. Did the Somerset Manufacturing Company have any sales agency?

A. No.

Q. Was the Somerset Manufacturing Company engaged in the sales of garments?

A. They were not.

Q. What was the business of the Somerset Manufacturing Company?

A. To manufacture the garments.

Q. And did the Somerset Manufacturing Company engage in the shipping of manufactured garments?

A. They did not.

Q. Where did the raw materials come from?

A. They came from the jobber.

Q. And who was the jobber for the Somerset Manufacturing Company?

A. The Lee Sportswear Company.

Q. And are you associated with the Lee Sportswear Company?

A. I am.

Q. In what capacity?

A. I am a partner.

Q. Is the Lee Sportswear Company interested financially in the Somerset Manufacturing Company as an owner?

A. They are not.

Q. Is the only association between the Somerset Manufacturing Company and the Lee Sportswear Company that of jobber and manufacturer?

A. Yes.

Q. Is the Lee Sportswear Company—

Withdraw the question.

Did the Lee Sportswear Company in July, August, and September of 1935 have any other source for manufacturing?

A. They did.

Q. And did they engage other manufacturers to manufacture garments for them in those months?

A. They did.

Q. And at the time of the strike, did the Lee Sportswear Company, to your knowledge, have

other manufacturers who might furnish finished garments for them?

A. I believe they did.

Q. Did the strike activity at the plant of the Somerset Manufacturing Company in Somerville affect the sales of your garments, the sales of the Lee Sportswear Company to your knowledge?

A. No, they did not.

Q. Was there any stoppage in the stream of commerce in the Lee Sportswear business selling garments?

A. No.

Q. By reason of the strike in Somerville with the Somerset Manufacturing Company?

A. No, there was not.

Q. Who received the raw materials at—
Withdraw the question.

Did the Lee Sportswear Company have a representative on the premises of the Somerset Manufacturing at Somerville?

A. They did.

Q. And do you know who that representative was?

A. Yes.

Q. What was his name?

A. Sol Fainblatt.

Q. Did he receive the raw materials when they were shipped to Somerville by the Lee Sportswear Company?

A. He did.

Q. And was it the practice for him to turn the garments over to the Somerset at Somerville when he received them, that is the raw materials?

A. Yes.

Q. And when the raw material was converted into garments, were they then returned to Sol Fainblatt, representing the Lee Sportswear Company, at Somerville?

A. They were.

Q. And what did he do with the garments when he received them?

A. He either stocked them or shipped them to the people that they belonged to, or rather, were sold to.

Q. And for whose account were they shipped or stocked?

A. The Lee Sportswear.

Q. They were not, to any degree, at all, stocked or shipped or sold for the account of the Somerset Manufacturing Company?

A. No.

Q. In other words, the Somerset Manufacturing Company was not engaged in selling garments?

A. No.

Q. The answer is No?

A. I beg pardon?

Q. Were not engaged in selling garments?

A. The Somerset was not engaged in selling garments.

Q. The Somerset Manufacturing Company was not engaged in buying raw materials?

A. No.

Q. I infer from what you tell me here they were not engaged in the shipping of either the raw materials or the finished garment, is that right?

A. That is right.

Q. Can you, Miss Fainblatt, tell me the gross amount of business that the Somerset Manufacturing Company did in the year 1935?

A. I judge it was somewhere around \$48,000.00.

Q. That was the year of the strike activity, is that right?

A. Yes.

Q. And the year preceding that, 1934, can you tell me approximately the gross amount of business done by the Somerset Manufacturing Company?

A. About \$9,000.00.

Q. Are there any other concerns or individuals engaged in the manufacturing of similar garments to those which the Somerset were manufacturing?

A. You mean—

Q. Were there any other concerns that you know of, or individuals, in the same line of business as the Somerset making the same garments or similar garments?

A. Do you have any particular territory?

Q. Anywhere that you know of.

A. There are any number of them.

Q. Do you know of persons or firms manufacturing similar garments?

A. I do.

Q. Were there many firms larger than the Somerset Manufacturing Company in that line?

A. Oh yes.

Q. Do you know how much manufacturing the Somerset did in comparison with the amount of manufacturing in that line which is carried on throughout this country?

A. I would not say it was more than a drop in the ocean.

Q. Is that the way you would characterize it?

A. That is the way I would characterize it.

Q. You have no idea of figures?

A. No.

Q. In other words, the Somerset Manufacturing Company was engaged in manufacturing sportswear to such a small degree that any labor dispute out there would not affect materially to any extent the flow of commerce in that line, is that right?

MR. MOSCOVITZ:

Just a moment. I don't know how to object to that question, Mr. Examiner, because it raises so many questions. But I do object to it.

It calls for a conclusion. It puts an answer to the witness, to which she must need only make an affirmative reply, and I think it should be rephrased.

It is leading.

TRIAL EXAMINER GATES:

Do you wish to rephrase it, Mr. Gerofsky?

MR. GEROFSKY:

Yes, I will reframe it.

BY MR. GEROFSKY:

Q. What proportion does the manufacturing which you say the Somerset does—the Somerset's gross business there to the gross, or the entire field of manufacturing in the same line.

A. I could not say.

Q. Would you say it was large or small?

A. I would say it is small.

Q. Would you say that any labor trouble incurred in the plant of the Somerset would affect materially the flow of commerce in that line?

A. No.

Q. Your answer is what?

A. I don't quite understand.

MR. MOSCOVITZ:

I don't understand either.

BY MR. GEROFISKY:

Q. In other words, would any—I will withdraw the question for the moment. Did the labor difficulty encountered by you at the plant in Somerville affect the flow of these garments in the sportswear industry?

A. No.

Q. Was the Lee Sportswear Company your sole jobber, able to obtain another manufacturer?

A. Well, they had been doing business with other manufacturers.

Q. Were you able to fill all your orders?

A. Yes.

Q. Do you have the books of the Somerset Manufacturing Company with you today?

A. I have them.

Q. Are you familiar with those books?

A. To some extent.

Q. To what extent? Do you know the number of employees at the plant in the Somerset Manufacturing Company today?

A. Oh, today—

MR. MOSCOVITZ:

That calls for a Yes or No answer.

MR. GEROFISKY:

Withdraw that question.

BY MR. GEROFISKY:

Q. Will the books reveal the number of employees at the plant today?

A. I have not got the books of the Somerset Manufacturing Company as they are today.

Q. You have not?

A. I have them up to the time that I was the owner.

Q. Do you know how many employees there are out there today?

MR. MOSCOVITZ:

May I ask that that be answered Yes or No, please, because I am going to object to the next question.

A. Would you mind repeating that, Mr. Gerofsky?

BY MR. GEROFSKY:

Q. Do you know how many employees there are at the plant at the present time?

A. Offhand, I can't say exactly.

Q. Do you know the average number of employees at the plant for the year, 1937, January to October?

MR. MOSCOVITZ:

I want to object to that question, Mr. Examiner, on the ground, first, that it is immaterial, it is irrelevant, it is incompetent, it has nothing to do with the issues that were before the Board originally, we being limited to the Acts as alleged as having been violation of this statute as of the time those violations took place.

Secondly, if it is going to be the policy of this Board or if it is going to be the law of this Board to permit changes in status to over-rule violations, you are going to frustrate the very purpose of this statute, because in every situation an employer can add the necessary number to over-ride the proper number existing at the time the violation took place in collective bargaining cases, and that must not, obviously, be permitted.

TRIAL EXAMINER GATES:

I will reserve decision on the objection.

The witness may answer it, if you care to make any statement in respect to it.

BY MR. GEROFSKY:

Q. Did you get that question?

A. I think I did.

MR. GEROFSKY:

Before proceeding with the question, however, I should like to answer counsel. I believe the purpose of the act under which we are proceeding here today is to sponsor a feeling of good will more or less, between the employer and the employee, and to prevent labor strike trouble, and it is with this view that we wish to offer this testimony today, in this respect: Firstly, we have the order of the Circuit Court of Appeals for the Third Circuit permitting this hearing.

That order was based on a petition filed with that Court, and in that petition we alleged a change in conditions at the plant since August, 1935 to October, 1935.

It seems that the Board through no fault of the Respondents in this case delayed its proceeding in the Circuit Court. They had made their findings, and it seems after they had come to these findings taken considerable time before they went to the Circuit Court.

Now, in that interim of time through no fault of the Respondents, conditions have changed, and then you go to the Circuit Court and ask the Circuit Court of Appeals to enforce an order, an order made by this Board, the Labor Board, that was made some time before the Circuit Court was appealed to, some time before the present condition came about in the plant,

and they were entirely different, and now that there are peaceful conditions in the plant I feel that the Circuit Court of Appeals should know of these peaceful conditions.

They have gone over it in stating it one case, I believe it was the case in which the Board was opposing it, the Delaware and New Jersey Ferry Company, and in that case the Court held that where the labor strife and conditions have been smoothed over and changed since the time the complaint was filed, then the Court would not enforce the Board's findings:

It is with that thought in mind that we offer this testimony today; first to comply with the petitions we filed, by which this hearing was obtained, and secondly to show a peaceful condition there with no strife between employer and employee, and no effect on commerce taking place, so far as the interruption is concerned.

TRIAL EXAMINER GATES:

I will continue to reserve decision on it.

The question may be answered.

BY MR. GEROFKY:

Q. I believe the question is, do you know the average number of employees at the plant since January, 1937 to October, 1937?

A. Well—

MR. HALPERN:

Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER GATES:

On the record.

MR. MOSCOVITZ:

I am willing to stipulate, Mr. Examiner, with-

out waiving my objection that the average number of employees in the period stated by Mr. Gerofsky in the question put to this witness is 200.

MR. GEROFSKY:

Mr. Examiner, please, will you grant me a recess for a few moments?

I may be able to shorten these proceedings.

TRIAL EXAMINER GATES:

Very well. How long, three or four minutes?

MR. HALPERN:

Give us five minutes.

TRIAL EXAMINER GATES:

We will recess for five minutes.

(The hearing recessed for five minutes.)

MR. HALPERN:

We just want to add to the stipulation as given by Mr. Moscovitz the fact that the average number of 200 employees during the year 1937 were engaged in production at the plant—

MR. MOSCOVITZ:

In the tailoring department.

MR. HALPERN:

In the tailoring department.

MR. GEROFSKY:

I think that is all with this witness.

Cross Examination

BY MR. MOSCOVITZ:

Q. I am not going to ask you many questions about the stream of commerce, but I would like to know what you mean when you say that at the time of the strike there was no stoppage in the stream of commerce,

A. I don't quite understand just what you are trying to get at.

Q. I am not clear myself. Except that Mr. Gerofsky asked you whether or not there had been a stoppage in the stream of commerce at the time of the strike. Now, will you explain that to us a little better?

A. All I can understand of it was this: That whether it held up the Lee Sportswear Company from delivering their merchandise, and it did not.

Q. Was there a diversion of your business that ordinarily went to the plant in Somerville to a different plant during some period of the strike?

A. You mean did we ship the merchandise to other manufacturers?

Q. Rather than the Somerville plant?

A. Yes.

Q. Because of the dispute then in existence?

A. Yes.

Q. Now, the first plant in Somerville was the Somerville Manufacturing Company of which your father was the owner?

A. Yes.

Q. And at the time that he started operations in Somerville, he used machinery which was owned by you?

A. Yes.

Q. Now, did you own the machinery before it was sent to Somerville or did you buy it new some place and have it shipped to Somerville for his use.

A. I bought the machinery.

Q. Brand new?

A. Some of it was brand new.

Q. Did you buy it for the use of your father, Benjamin Fainblatt and then loan it to him?

A. I loaned it to him.

Q. Did he, during the period of time that he was using that machinery in his operations in the Somerville Manufacturing Company, pay you for the use of that machinery, or was it the kind of a loan that a daughter might make to a father?

A. It was a loan and yet with the contemplation that I would be taken care of.

Q. Now, when you say that you would be taken care of, do you mean—

A. I mean it would come under the list of expenses and so on. I had contemplated going into business.

Q. With him?

A. Not with him. By myself.

Q. By yourself?

A. Yes..

Q. But at the time you bought this machinery for him, he did not pay you for it, did he?

A. No, he did not.

Q. And you did not exact any payment from him for it?

A. No.

Q. Did you tell him that he could use it without payment to you?

A. If you want to say it in that term, Yes.

Q. Now, when you came out to Somerville in the Somerset Manufacturing Company, which subsequently went out of business—

A. When I came, the Somerset Manufacturing Company was doing business.

Q. When you came to Somerville the Somerset Manufacturing Company was in business?

A. Yes.

Q. Then you started the Somerset Manufacturing Company, is that right?

A. Yes.

Q. You say you were the sole owner of that business?

A. Of the Somerset Manufacturing Company.

Q. Is that right?

A. That is right.

Q. Your father had no interest in it at all?

A. No interest whatever.

Q. And then you both used the same machinery?

A. Yes.

Q. Were you manufacturing different kinds of things?

A. Yes and No.

Q. Did you use the same employees?

A. Yes.

Q. And they worked, of course, in the same plant?

A. Yes.

Q. How were you able to divide in the use of the machinery and the use of the employees the amount that each company would contribute toward the pay of a particular employee who might at that time have been working interchangeably?

A. They worked according to their time.

Q. Who allotted the time, who fixed the time.

A. They had their time card.

Q. If they went to work in the morning, they would punch a clock, wouldn't they?

A. Yes.

Q. Would they punch the Somerset Manufacturing Company card or Somerville card.

A. Whichever occasion might arise.

Q. Suppose they started to work in the morning, and punched a Somerset Manufacturing Company and in the middle of the day they were put on Somerville Manufacturing Company work, what would happen then?

A. They punched out, and repunched on a new card.

Q. Before they started a different operation they would go down and punch out and punch in on a new card?

A. Yes.

Q. You are sure of that?

A. Yes.

Q. So I have this straight, if Fay Katz went to work at nine and went to work at eleven o'clock on Somerset Manufacturing Company work, she would have punched in in the morning Somerset Manufacturing, is that right?

A. I would eliminate her name entirely, the name of an individual, yes.

Q. Any individual?

A. Yes.

Q. Then when she finished making a dress or coat or whatever it was at eleven o'clock, someone would bring her a bundle of goods of the Somerville Manufacturing Company?

A. I don't know just how they arranged it at the time. It usually would be a half a day's work.

Q. How would a person know when a person reported for work in the morning?

A. They would know.

Q. Which card to punch?

A. They were told.

Q. When they came in by the clock?

A. When they came in by the clock, Yes.

Q. So when they came in by the clock, someone would be there and say, "This morning, you punch a Somerset card, instead of a Somerville card."

A. I presume so.

Q. Do you know?

A. I was not there at the time when it was done.

MR. MOSCOVITZ:

Let me see the cards that were marked for identification. I want to make it clear.

MR. GEROFISKY:

I only have cards of the Somerset.

MR. MOSCOVITZ:

That was after the Somerville was out of business?

MR. GEROFISKY:

Somerville was out of business in February, 1935.

MR. MOSCOVITZ:

Now, it was not until January, 1937 that you sold the Somerset to your father?

A. Right.

Q. During the time of the labor dispute in question, it was still owned by yourself and your father was acting as manager?

A. Right.

Q. When did that transaction take place of your father becoming no longer an owner of Somerville Manufacturing Company, and becoming a manager of the Somerset Manufacturing?

A. He continued as a manager of Somerset Manufacturing.

Q. Was he a manager of it at the time he was also an owner of the Somerville Manufacturing?

A. Yes.

Q. So it was just a continuation?

A. Yes.

Q. When you sold this business to your father, he paid you for it, did he?

A. Yes.

Q. And while he was acting as Manager during this labor dispute, you paid him a salary?

A. A salary.

Q. Is that right?

A. Yes.

Q. Would you pay him by check or would you pay him by cash?

A. Cash, most of the time.

Q. Was the money from which his pay was drawn banked in Somerville or banked in New York?

A. I could not say.

Q. Who had charge of that?

A. Well, he himself.

MR. GEROFISKY:

Which money are you referring to?

MR. MOSCOVITZ:

His pay as Manager of the Somerset Manufacturing during the time that this labor dispute was in existence, at the time of the strike, during negotiations with Mr. Posner before the strike.

MR. GEROFISKY:

I can't see where that is material, Mr. Examiner, as to what Mr. Fainblatt did with his money. He may have banked it in Somerville, he may not have used the bank for his pay money. He may have spent it each week.

TRIAL EXAMINER GATES:

Are you referring to what Mr. Fainblatt did with the money after he was paid or not.

MR. MOSCOVITZ:

No. I don't like to go into these personal questions.

Mr. Gerofsky asked this witness on direct examination.

TRIAL EXAMINER GATES:

I am asking you whether you are referring—

MR. MOSCOVITZ:

I want to know who paid it.

TRIAL EXAMINER GATES:

Not what he did with the money?

MR. MOSCOVITZ:

I don't care what he did with the money.

TRIAL EXAMINER GATES:

You may continue.

BY MR. MOSCOVITZ:

Q. I want to know who paid Mr. Fainblatt for being manager out of the money of the Somerville or Somerset.

A. Out of the money of the Somerset Manufacturing Company.

Q. Did he have the right to draw the checks for payment himself?

A. He did not.

Q. Who had the right to sign checks?

A. Only I.

Q. No one else?

A. No.

Q. Your father then could draw no money?

A. No.

Q. Pay no bills?

A. No.

Q. Used no cash at all from the revenue of this company?

A. No.

Q. Did you also draw a salary from the company.

A. I did not draw a salary. I drew money.

Q. Certain intervals, I assume?

A. Yes.

Q. And were there other persons who drew money out of that business?

A. There was not.

Q. Just you and your father, is that right?

A. Yes.

MR. GEROFKY:

Just a moment. There is no testimony that her father did draw money out of the business. The testimony is here that he received a salary.

Q. Did your father draw any money out of the business outside of the salary?

A. No.

Q. Your father would get his salary as general manager, but you were the only one that drew interval payments?

A. That is right.

Q. During the time that your father was manager before he bought this business, who was in charge then of the labor policy of the Somerset Manufacturing Company? Who could do the hiring and firing?

A. Mr. Fainblatt.

Q. You mean Benjamin Fainblatt?

A. Yes.

Q. Who had the right to determine whether or not there would be negotiations with a labor organ-

ization or with a representative of a labor organization, Mr. Fainblatt?

A. Mr. Fainblatt.

Q. So that he was the person to deal with in that plant?

A. Upon consulting me.

Q. Your father would consult with you before he would do these things?

A. I think if anything more or less drastic, shall we say, occurred, he would.

Q. If he wanted to hire somebody or fire somebody he would wait until he discussed it with you?

A. No.

Q. What?

A. No.

Q. But if he had to do something drastic, like talking to a Union representative, that is different, is that it?

MR. GEROFISKY:

I object to that. There is no testimony here with this witness that anything of that sort would be drastic.

MR. MOSCOVITZ:

The witness testified if it was something drastic that had to be done, it would be done by conferring with Mr. Fainblatt.

There are only three things we are talking about here.

MR. GEROFISKY:

I submit there are any number of things that might be drastic, and I think Mr. Moscovitz might ask this witness if that is drastic.

MR. MOSCOVITZ:

I won't press it. I will let the record speak for itself.

BY MR. MOSCOVITZ:

Q. Did your father speak with you about discussions he had with Mr. Posner.

A. He did not go into details with me.

Q. Did you leave the matter in your father's hands?

A. To some extent.

Q. And to what extent didn't you?

A. I felt when the question arose that we would then discuss it thoroughly.

Q. What question?

A. The question of what policy to follow.

Q. Now, did your father tell you that Mr. Posner made a request for an agreement?

A. He did.

Q. That then precipitated determination of what policy would be pursued, didn't it?

A. Yes.

Q. Did you discuss it with your father?

A. I did.

Q. Decide the question?

A. No, we did not decide the question.

Q. What was decided?

A. There was no definite decision, simply told as the workers willed it.

Q. As what?

A. As the workers willed it.

Q. As the workers willed it?

A. Purely up to the workers themselves.

Q. So if the workers at that time wanted Mr. Posner to have a signed contract with the company, it would be all right with you?

A. We might have agreed upon it.

Q. Now, Mr. Posner brought that matter to the

attention of your father just that way, according to the record. What was the decision which you made on that point?

A. I did not think Mr. Posner at that time was the representative of our workers.

Q. Did you tell that to your father?

A. I did.

Q. Did you tell him to impart that information to Mr. Posner?

A. I can't remember exactly, but I presume I did.

Q. What investigation did you make to determine that he was not the representative of the workers? How did you find that out?

A. I made no investigation.

Q. Now, when you sold this business to your father, how much money did you get for it?

A. Mr. Fainblatt assumed all my liabilities.

Q. That was the sale?

A. That was the bill of sale.

Q. How large were those liabilities?

MR. HALPERN:

I object to the question. All this took place in January, 1937, following after the day of the strike, and long after the first hearing in this case. I can't see its materiality at all.

MR. MOSCOVITZ:

In the first place, it is raised on direct examination by Mr. Gerofsky.

In the second place, it throws some light, it seems to me, on the acts that preceded it, and on the situation as it really was prior to the time of the execution of this alleged bill of sale.

TRIAL EXAMINER GATES:

I will reserve decision on the objection. The

question may be answered, subject to later ruling on the objection.

A. Do you mind repeating that?

BY MR. MOSCOVITZ:

Q. How large were those liabilities?

A. There was a chattel mortgage, plus liabilities that I had.

Q. Chattel mortgage on the machinery?

A. Yes.

Q. Now, how was that assumption of liability by your father when you owned the machinery?

A. I was responsible for that machinery.

Q. So that someone held a chattel mortgage on that machinery that you bought for the use of your father?

A. Yes.

Q. And your father assumed the responsibility of paying off that money to the mortgagee?

A. Yes.

Q. Who was that person?

A. The Lee Sportswear Company.

Q. The Lee Sportswear Company is yourself, isn't it?

A. Only in part.

Q. The other part are brothers and sisters?

A. No.

Q. Just brothers? And has your father paid those liabilities?

A. Not yet.

Q. Does your father now run his business by signing his own checks?

A. He signs his own checks.

Q. You don't do it any more?

A. I have power of attorney.

Q. Why do you still have power of attorney if it is not your business?

A. The thought that he might, if anything were to happen to him, that there would be someone in the interval to take care of things.

Q. Of the business, you mean?

A. Yes.

Q. Do you ever sign checks to yourself as Lee Sportswear Company from the revenues of the Somerset Manufacturing Company?

A. No.

Q. In payment of any moneys that may be due the Lee Sportswear Company?

A. There are not any moneys due to Lee Sportswear Company, unless what Mr. Fainblatt owes them, which he has not paid for as yet.

Q. How long have those payments been overdue, since the first of January?

A. Since the first of January.

Q. You have not sent him a lawyer's letter, have you?

A. No.

Q. At the time of the strike you say that twenty persons struck, is that right?

A. I think so.

Q. That fifty-three persons were listed as being in the employ of the company, that forty-six reported for work the morning of the strike, and that twenty-six remained at work after the strike call was issued. Now, can you tell me of the twenty-six who remained at work how many were persons who were not employed in the tailoring department?

A. They were all employed in the tailoring department.

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Q. Weren't there any persons who acted as shipping boys or shipping girls?

A. No.

Q. What happened to them?

A. Well, there was not any need of them.

Q. You mean they had not been working the week or two before?

A. I don't quite understand.

Q. Let me put it to you this way.

MR. GEROFISKY:

I might suggest all of our figures given take in only those employees engaged in the manufacturing or production, tailoring department.

TRIAL EXAMINER GATES:

Q. Only those who have a number?

A. Those who have a number.

MR. MOSCOVITZ:

So that your figures, Mr. Gerofsky, did not include shipping people or persons outside of the tailoring department?

MR. GEROFISKY:

That is right.

BY MR. MOSCOVITZ:

Q. Now, Mr. Gerofsky went over some ten or eleven names with you, so that you could testify and give facts which would show that these persons were not in the employ of the company at the time of the alleged collective bargaining refusals. Do you have those records before you again?

A. Yes.

TRIAL EXAMINER GATES:

Off the record.

(There was a short discussion off the record.)

TRIAL EXAMINER GATES:

On the record.

BY MR. MOSCOVITZ:

Q. In those names, Miss Fainblatt, I understand that where a person has been employed on the last working day, if that person was not discharged, that person is carried on the payroll of the company as an employee for a certain period of time, despite the fact that that person does not work, is that right?

MR. GEROFISKY:

Not a certain period of time, or definite. The records will really indicate that time.

BY MR. MOSCOVITZ:

Q. Is that right?

A. The name is continued, yes.

Q. Is there a fixed period of time, fixed by the policy of this company, during which the employee's name is carried?

A. No, there is no fixed period or policy.

Q. So that a person's name may be carried on the payroll for one week or two weeks or more in some cases, isn't that true?

A. Yes.

Q. And who decides when the name shall be dropped from the payroll list?

A. Well, after we continue writing these names in the book for awhile we just drop them out, that is all. There is no time shown.

Q. The person who decides that, I assume, is the bookkeeper, isn't that right?

A. I guess.

Q. And if the bookkeeper does not get so tired one week she may continue it on for a couple of more weeks, is that right?

A. Yes.

Q. So there is no magic in the fact that somebody's name does not appear after a week or two on that payroll list?

A. No what?

Q. Magic in the fact.

A. No.

MR. MOSCOVITZ:

I think that is all.

Redirect Examination

BY MR. GEROFISKY:

Q. Do you remember the date that the Somerville started business out there, the Somerville Manufacturing Company?

A. I don't remember the exact, but it was the early part of August.

Q. What year was that?

A. 1934.

Q. How long after they started in out there in Somerville was it before your company came in?

A. Just a matter of a few weeks.

Q. It was just a matter of a few weeks' difference between the starting date of the Somerville and the Somerset?

A. Yes.

Q. Both of them, however, commencing operations in the month of August, 1934, is that right?

A. Yes.

Q. With respect to an employee who, for instance, taking Sylvia Marano, who worked there to a date in July, you carry her name, it seems, for a week.

Thereafter, her name was not listed as an employee. You don't know, do you, at the time an employee goes out what thoughts they entertain in their mind with respect to going back to work for you?

A. No.

Q. Whether or not they were quitting?

A. No.

MR. GEROFSKY:

That is all.

(Witness Excused.)

MR. GEROFSKY:

Will you permit me to take the stand?

LEON GEROFSKY a witness called by and on behalf of the Respondents, after having been first duly sworn, was examined and testified as follows:

Direct Examination

BY MR. HALPERN: -

Q. Did you represent the Somerset Manufacturing Company during the strike proceedings?

A. I did.

Q. Did you have occasion to negotiate with Mr. Posner as regarding entering a contract for the employees?

A. Mr. Posner came to see me on one or two occasions, and then I had occasion to see him at the Post Office in Somerville on another occasion.

Q. What were the conditions under which Mr. Posner wanted you to sign a contract?

A. Mr. Posner came to me and said that he represented the girls, the employees of the Somerset Manufacturing Company, and that they had selected him as their representative.

I, in speaking with him, wanted to know where he got his authority, whether or not there had been an election held at the plant, and whether or not all of the girls, employees, had been afforded an opportunity to engage in the selection of a representative.

I insisted that he was just the representative, and fail to give me the information I sought, and I nevertheless asked him what he was seeking.

And he insisted that he was seeking a contract, an agreement, a minimum hour week and a minimum wage.

I asked him whether or not we could get together without a contract, and he insisted that we could not.

I asked him too whether or not a contract would require a closed shop, Union help entirely, and he insisted that it would.

And in all the proceedings that I had occasion to meet Mr. Posner, he would infer or insist from time to time that an agreement be one for a closed shop agreement, and that the whole matter of bargaining would be predicated upon a closed shop agreement in the plant.

Q. Now, since the last hearing held in Somerville, have you had occasion to negotiate or talk to anyone representing the union as regards a contract?

A. Yes.

Q. With whom?

A. I received a telephone call one day this past

summer from one who gave his name as A. Isserman, who said that he represented the International Ladies' Garment Workers' Union, and he wanted to know if we could get together in this dispute, and I told him that the matter was now pending before the Circuit Court, and I wondered whether or not we could talk of the matter now that the Board has prosecuted its petition with the Circuit Court of Appeals.

We ought to consult the Board attorneys first.

He then stated that if we could get a contract, referring to the International, if we could get a contract for the Somerset plant, we can dispose of the Circuit Court proceeding.

Q. Now, did he indicate whether or not this contract would be predicated upon a closed shop?

A. I asked him directly on that point, having had my experiences with Mr. Posner; I asked him about the closed shop features, I gathered were insisted upon by Mr. Posner, and he said, of course, naturally.

And when I asked him if the contract meant a closed shop, open to union help alone—

Q. In other words, in all your dealings, the only way you could have a contract would be on a condition precedent that there be a closed shop.

A. In all my experience in this matter, the only way we could even get together on bargaining was by way of taking in a contract, that is with my experiences with Mr. Posner, and this telephone conversation with Mr. Isserman.

Q. And you so informed your client?

A. I have.

MR. HALPEN:

That is all.

Cross Examination

BY MR. MOSCOVITZ:

Q. When you spoke with Mr. Posner, didn't he make any alternative suggestions or demands?

A. No, he never gave me any alternative suggestion.

Q. What election were you referring to at the time you asked Mr. Posner if an election had been held?

A. I was referring to thinking in my own mind at the time I was speaking of an orderly procedure by which it might be fairly and equitably determined whether or not Mr. Posner was a representative, calling an election in the plant, during working hours, which right should be afforded to the girls.

Q. An election to be called by whom?

A. An election to be held and called by the employees which was their right.

Q. Did you mean with the Union?

A. An election to be held among the employees of the Somerset to decide as to whether or not they wanted to be represented.

Q. Did you put the suggestion up to Mr. Posner that an election should be held in the plant?

A. I asked Mr. Posner insofar as a suggestion is concerned, I have repeatedly asked the National Labor Board whether or not we could have an election.

Q. Was that during the strike or after the strike?

A. Prior to the strike, insofar as Mr. Posner

was concerned, but after the strike with the Labor Board.

Q. Now, when you spoke of Mr. Posner, did you ask that an election be held or did you simply inquire as to whether or not one had been held.

A. No, I insisted from the information that I had that he was not the representative because no election had been held.

I had the information that no election had been held at the plant, and in addition to that, in speaking with a number of the girls, I wanted to satisfy my own mind, and I ascertained that they had not been invited to a meeting. In fact, I have a number of affidavits from a number of girls who were employed there at the time stating that they had no invitation to any meeting, never called upon in making any choice as to a representative.

Q. Now, in your negotiation with Mr. Posner, were you acting with the authority of Mr. Fainblatt, your client, to dispose of the dispute in question?

MR. HALPERN:

I object to the question. He did not say he was acting for Mr. Fainblatt. He was acting for the Somerset Manufacturing Company.

BY MR. MOSCOWITZ:

Q. I will amend my question, for the Somerset Manufacturing Company.

A. I was engaged by the Somerset Manufacturing Company, by Miss Fainblatt, to represent them in this dispute.

Q. And were you authorized to negotiate with Mr. Posner with a view toward settling the dispute?

A. I was authorized to talk with him, and he had, it seems, had gone down to the plant and made cer-

tain demands there, he went in very forcefully like, and his demeanor, and his general attitude forced more or less my client to come to me and tell me that I would have to talk to them. Certain things.

Q. That is what Mr. Fainblatt told you?

A. Miss Fainblatt, and Mr. Fainblatt.

Q. But you did not see that in the plant.

A. No; but I was satisfied after I saw Mr. Posner the first time that it was very possible.

Q. All right.

Now, then, when you were talking with Mr. Fainblatt, were you authorized to negotiate a settlement of the dispute?

A. I was, in a way authorized to discuss this whole matter.

Q. Were you authorized at any time to bargain with Mr. Posner as the representative of the Somerset Manufacturing Company?

A. No, I was not authorized to bargain with them.

Q. Were you authorized to enter into a collective agreement with him, whether it be written or oral?

A. No, I did not go into that with my client.

Q. Well, wasn't that one of the questions that you had before you in these conferences, the question of a collective agreement?

A. As I stated, Mr. Posner came to my office, the very first time, and he told who he was, and I have already related what transpired since, and I asked him just what sort of agreement it was, and he told me a closed shop.

And I asked him whether or not he could agree on hours and wages without an agreement, and he said No. That is an agreement for a closed shop.

MR. MOSCOVITZ:

Now, will the Reporter read my question back?

(The Reporter read the question:

"Q. Well, wasn't that one of the questions that you had before you in these conferences, the question of a collective agreement?")

BY MR. MOSCOVITZ:

Q. Isn't it a fact, that Mr. Fainblatt of the Somerset Manufacturing Company, would not under any circumstances recognize the Union as a representative of his employees, and its members for purposes of collective bargaining?

MR. HALPERN:

I object to the question. Mr. Fainblatt was not the Somerset Manufacturing Company.

MR. MOSCOVITZ:

Mr. Gerofsky testified Mr. Fainblatt retained him.

MR. GEROFSKY:

No, I said that Miss Fainblatt retained me.

BY MR. MOSCOVITZ:

Q. Then, I will amend my question by including the name Somerset Manufacturing Company.

A. I would not say so.

Q. What would you say then in that regard?

A. Insofar as the Somerset was concerned, the Somerset to my knowledge, in conversation with Miss Fainblatt and Mr. Fainblatt was willing to go along and work out the matter of wages, the matter of hours, and if at all possible a solution to this union dispute, whether or not these girls should be unionized. They were willing to go part way with him on that.

Q. Well, you say they were willing to discuss hours and wages and go part way. Were they willing to enter in an agreement on those points with Mr. Posner?

A. They were willing to work out an agreement. It seems after the Board came into the case, I believe it was after I had spoken with you and Mrs. Herrick, but Mr. Posner insisted upon a closed shop contract. Not at any time conceding,—we are not conceding at any time any fact of representation on the part of Mr. Posner.

I did it more or less by way of settlement, that could be worked out. We are not conceding any proper representation with these negotiations.

Q. Didn't Mr. Fainblatt say he would not have an outsider running his business?

A. When?

Q. During these negotiations.

A. I believe I heard him refer to someone else trying to run his business.

Q. Yes.

And wasn't that someone else the Union?

A. Just what he meant by it, I could not say. But he might have meant a number of things. He might have meant furtherance of what I have already stated, that Mr. Posner was not a proper representative, to his knowledge, or was not a properly selected representative.

Q. You mean he did not like his personality?

A. Forgetting personality, Mr. Posner was not properly selected as representative by the majority of the girls, and we had that, we had knowledge of.

Q. How do you know that he was not properly selected?

A: I spoke with a number of girls.

Q: Was that during the period of time that these negotiations were going on?

A: Yes, I believe it was. If you will let me refer to my diary.

It was around in November.

Q: 1935?

A: Yes.

Q: How about before, when Mr. Posner actually came in and claimed to represent these girls.

A: I spoke with them then. I spoke with the girls when I first came into the case. As I recall now—it is two years ago—I spoke with them first, and then later went down and asked the girls if they would sign an affidavit as to just what did happen with respect to the meeting.

Q: That was back then to the time Mr. Posner actually came in?

A: That was just before the hearings. The hearings were held in February, 1936. This was in November, 1935, two months [before] the hearing.

Q: Was that the first check then in November that you made of this question of whether or not he represented the girls?

A: The first check that I made was back around August or September, around that time.

Q: Did you do that by actually speaking to the girls whom he claimed to represent?

A: I did not know who he claimed to represent. That was just it. He would not give me the information.

I wanted to know who he represented, but he would not tell me. In fact, the very first time that I could get any information as to who were members

and who were not members, was at the hearing before this Board in February, 1936. I thought it was a matter of fairness, I should like to know.

Q. How did you find out then, did you simply question them indiscriminately in September, the girls?

A. I went about amongst a number of the girls.

Q. In the plant?

A. I waited there until the end of the day.

Q. Did you see them in the office of the company or in the shop itself?

A. I saw them in the shop.

MR. HALPERN:

For my benefit, I don't understand whether Mr. Gerofsky is talking about girls who had supposedly signed up with the Union, or girls who remained in the company unsigned.

I don't know which he is talking about.

MR. MOSCOVITZ:

Here is what I understand. I understand Mr. Gerofsky is claiming since he was not advised who the members were, he made it his business to check on this question of representation by questioning the girls without any previous knowledge as to whether or not they were members of this Union, and in that way find out.

BY MR. MOSCOVITZ:

Q. Isn't that true?

A. I circulated about the plant at the end of the day, to see just how far he was right or whether he was right or wrong in what he had said.

After all, I was called up to talk to this man, and my clients had received demands from this person, Mr. Posner, and we have a right to know whether or

not he was a total stranger, whether he actually represented them, whether or not all of the girls participated in the selection.

Q. How many girls did you see and question?

A. I have a record of that, Mr. Moscovitz. About twenty-six.

Q. Did you ask them definitely as to whether or not they were members of the Union?

A. I will tell you what I asked.

I asked them if they had been in the employ of the Somerset Manufacturing Company for any considerable period of time, more particularly were they in the employ of the Somerset in the month of September, 1935, and I asked them at any time were they informed of a meeting called by the International Ladies' Garment Workers' Union or any other Union.

I asked them if at any time they were invited to any meeting, whether or not they were ever called upon to select a delegate or representative to act in their behalf in the matter of bargaining collectively with the employer.

Q. Did any of them admit that they had signed application cards for membership in the Union?

A. I did not ask them if they had signed Union cards.

All I asked them was that which I have already related, and all of them told me that I spoke with, told me that they had not selected any representative, had not been invited to any meeting.

Q. Did you find, for instance, that any of the persons who told you that were persons whom you later discovered as having signed application cards for membership in the Union?

A. Not that I recall. I don't know.

Q. What were the names of the persons whom you questioned?

A. I believe one was Mabel Totten.

Q. Yes. There were twenty-six, weren't there?

A. What?

Q. Were there twenty-six?

A. Yes.

Q. What were their names?

A. Margaret Kopf, Genevieve Koproski, Natalie Rhodes, Mary Grill, Elizabeth Plum, Jean Drake, Louise Boner, Grace Vannest, Freda Bitthiem, Florence Elgarde, Fanny Ackerman, Anna Schnitzer, Mabel Rodenbough, Mary Gabinelli, Wanneta Bartly, Mary DeMelio, Sophia Kowaleczuk, Ann Teehan, Genevieve Vadinski.

Those are the ones.

BY MR. MOSCOVITZ:

Q. That is twenty.

A. Did I give you Josephine Lazaffi. I believe she was one.

Did I name Anna Lee? I am not sure whether I spoke to her. I can't say.

You see, some of these girls signed a statement to that effect, and I have copies here, and some of these persons when I later went back were out on the occasion of my visit for the day.

I would say that number of twenty-six is an approximation.

Q. After you made this check of the girls, did you advise your client of those facts?

A. I can't say that I did. I just don't recall definitely what I did say with respect to it.

I do know this, however, when the Board came

into the case I submitted and insisted that we still could not see where Mr. Posner had been called upon by a majority of the girls, of the employees.

Q. Did you in this submission disclose to the Board that you had affidavits signed by persons employed which indicated that they were not desirous of being represented by Mr. Posner.

A. I did not indicate to the Board that I had affidavits to the effect that they were not desirous, because I did not have any affidavits of that sort.

I merely had statements of these girls that they had not been called upon, not invited.

What I did do was to submit a list of names to the Board, and the Board without disclosing to me the names submitted by Mr. Posner.

Q. Was supposed to check?

A. Was supposed to check on those.

Q. That was a payroll list, isn't that it? A list of the names of the persons on the payroll at a certain date?

A. I have a list of it. I believe the Board's correspondence will indicate that.

Q. As a matter of fact, after you made this check, you knew pretty well what the result of an election would be?

MR. HALPERN:

I object.

A. No. I did not.

MR. MOSCOVITZ:

I withdraw the question.

A. No, did not.

MR. MOSCOVITZ:

I withdraw the question.

That is all.

Redirect Examination

BY MR. HALPERN:

Q. At the time Posner came down to talk to you, were you under the impression that he was proceeding under the Wagner Labor Act to represent these girls?

A. No, I was not at that time. I was not under the impression that he was proceeding under the Wagner Act, but I knew of the Wagner Act.

Q. You knew the Wagner Act required fifty per cent of the girls?

A. That is right. I knew of the Wagner Act, and I had read the Act, and having read the Act, and having considered it, I then took the course that I have taken thus far.

Q. Did you at that time that your clients were engaged in inter-state commerce?

A. No.

Q. Was that perhaps, another reason why you felt with Posner the day you did, or didn't you take that into consideration?

A. No, Mr. Posner mentioned something to me about the Wagner Labor Act. It is all right if Mr. Posner wants to go into the Wagner Labor Act, I would go into it too, to see just what provisions there were to it.

MR. HALPERN:

That is all.

Recross Examination

BY MR. MOSCOVITZ:

Q. Did you understand that under the Wagner Act you have to have fifty per cent?

A. I understapd the term, the majority, to be better than fifty per cent.

Q. Better than fifty per cent.

On this inter-state commerce question, when Mr. Halpern asked you if your opinion of the inter-state commerce lead you to deal the way you did with Mr. Posner, I am not clear just what your answer means to that question.

A. May I have my answer.

(The Reporter read the question and answer as follows:

“BY MR. HALPERN:

Q. Was that perhaps another reason why you dealt with Posner the way you did, or didn't you take that into consideration.

“A. No, Mr. Posner mentioned something to me about the Wagner Labor Act. It is all right if Mr. Posner wants to go into the Wagner Labor Act, I would go into it too, to see just what provisions there were to it.”)

MR. MOSCOVITZ:

Having had the Reporter read back the question put to you on commerce, and having had the answer, I won't press the point further.

That is all.

MR. HALPERN:

That is all.

(Witness Excused.)

MR. GEROFSKY:

As far as testimony is concerned, we are finished.

TRIAL EXAMINER GATES:

Is there anything further?

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MR. MOSCOVITZ:

Nothing further.

MR. GEROFISKY:

I would at this time move to dismiss the Board's complaint and charge with respect to the eight girls.

There is nothing in the entire record to indicate definitely that Mr. Posner or the International Ladies' Garment Workers' Union, Local 149, was ever selected by a majority of the employees at the plant, either in August or September of 1935, or any time thereafter.

There is no definite or conclusive proof or even the slightest proof that might be called to convince me if you are to refer to the records of the concern, the only real record for this Board that any of these eight girls were discharged, there is, on the other hand, definite conflict in the testimony of the eight girls with respect to representation, and by reason of their conflicting statements, I am safe in saying that we can't rely to any great extent upon their testimony, that we must accept without question the testimony offered by Miss Fainblatt, and the records of the concern.

To be specific with respect to these eight girls, Mr. Posner says that the very first time that any cards were signed was on August 21, 1935, at Harmony Hall in Raritan.

He said there were twenty-five cards signed at that time.

That is the first time we ever had any cards signed, from the evidence of Mr. Posner, the

representative of the Union and the alleged representative of the girls.

TRIAL EXAMINER GATES:

Just a moment, before you proceed.

If you want to argue it, that is perfectly all right. But we won't put it on the record.

The Examiner wishes to say unless you wish to state very briefly the grounds, those properly go in the record, I don't want to make a long record of argument on it.

You may do it either way, whichever way you want to do it.

(There was a short discussion off the record.)

MR. GEROFSKY:

I can be very specific about it.

TRIAL EXAMINER GATES:

Very well.

MR. GEROFSKY:

I wish to at this time ask for a dismissal of the complaint for three reasons:

Firstly, there is no testimony sufficient and satisfactory testimony upon which we might conclude Mr. Posner represented the girls.

There was never an election held at the plant, according to the testimony, or at any other place wherein a majority of the girls selected him.

My second point on which I rely is that there is no inter-state commerce activity on the part of the Respondent, Marjorie Fainblatt.

The third point I wish to relate at this time is that insofar as the Respondent, Benjamin Fainblatt is concerned, I submit the charges must be or should be dismissed against him en-

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tirely, because there is no testimony here that definitely indicates that he is the owner of the Somerset Manufacturing Company, or anything more than an employee of the Somerset Manufacturing Company. That the records that we must go by, the best evidence is that evidence of ownership as filed with the Secretary of State, the State of New Jersey and the County Clerk, the County of Somerset, New Jersey. Those records, the testimony indicates, show that Marjorie Fainblatt is the sole owner and operator of the Somerset Manufacturing Company, and all the girls who testified stated that they were in the employ of the Somerset, not the Somerville, and it is stipulated the Somerville owned by Benjamin was out of business after February, 1935, a great time before this dispute.

TRIAL EXAMINER GATES:

Your last point raises two questions in my mind. First, is the point which refers only to the time of the strike, and say, up to February, 1936, when the first hearing in this case was held. Is that correct?

MR. GEROFISKY:

Yes.

TRIAL EXAMINER GATES:

The second question is: Are you contending that Mr. Fainblatt is not now the owner of Somerset?

MR. GEROFISKY:

I am contending that she is, since January 2nd, the owner of the Somerset.

TRIAL EXAMINER GATES:

But not prior thereto?

MR. GEROFISKY:

Not prior thereto. Insofar as a dispute is concerned, I will state just as the Board has stated in its answer to my application before the Circuit Court, that they must concede this matter of collective bargaining today, and drop the charge, so to speak, because they cannot say that Mr. Posner represents a majority of the girls.

TRIAL EXAMINER GATES:

No, but I wanted to be certain that you were not at this point contesting that there was no proof as to the present owner of Somerset. That is conceded to be Mr. Faïnblatt, isn't it?

MR. GEROFISKY:

Today, since January, 1937.

With respect to that, my other point is that the Board has been dilatory in making its findings and taking further action on its findings heretofore made, in taking the matter to the Circuit Court of Appeals at Philadelphia, that in that interim of time, taken voluntarily by the Board, conditions at the plant have changed to such an extent that there is a peaceful operation, and a complete termination of any labor strife, with a number of girls being rehired, and re-employed who came back voluntarily and so forth.

TRIAL EXAMINER GATES:

Anything further?

Do you wish to reply to that, Mr. Moscovitz?

MR. MOSCOVITZ:

No.

TRIAL EXAMINER GATES:

Motion is denied.

MR. GEROFISKY:

Exception.

TRIAL EXAMINER GATES:

Is there anything further?

The hearing is adjourned.

(Whereupon, at 5:00 o'clock p. m., October 25, 1937, the hearing in the above-entitled matter was closed.)

SUPPLEMENTAL DECISION AND ORDER

On June 3, 1936, after a hearing, the National Labor Relations Board, herein called the Board, issued a Decision in this case¹ in which it found that Benjamin Fainblatt and Marjorie Fainblatt,² individuals doing business under the firm names and styles of Somerville Manufacturing Company,³ and Somerset Manufacturing Company, both of Somerville, New Jersey, herein called the respondents, had engaged in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3), and (5), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449. The unfair labor practices so found consisted in discrimination against eight of the respondents' employees in regard to hire and tenure of employment, thereby discouraging membership in International Ladies' Garment Workers' Union, Local No. 149, herein called Local No. 149, and in the refusal to bargain collectively with Local No. 149. The Board ordered the respondents to cease and desist from such actions; to reinstate to their former positions, with back pay, the employees found to have been discriminated against; to offer employment to all employees of the tailoring department who had gone out on strike as a result of the unfair labor practices, where the positions held by such employees on September 16, 1935,

¹ 1 N. L. R. B. 864.

² The name of the respondents has been variously spelled as Feinblatt, Fainblott, and Fainblatt. Marjorie has sometimes been referred to as Margaret, or Margorie.

³ The name, Somerville Manufacturing Company, was discontinued on February 15, 1935.

the date of the strike, were held by persons subsequently employed; to place other striking employees on a preferential seniority list, to be offered employment when their labor was needed; and, upon request, to bargain collectively with Local No. 149.

Pursuant to Section 10 (e) of the Act, the Board, on June 17, 1937, petitioned the United States Circuit Court of Appeals for the Third Circuit, herein called the Court, for the enforcement of this order. On October 4, 1937, the respondents filed a petition with the Court alleging in substance that they had failed to call witnesses and introduce any evidence at the former hearing because they believed that the National Labor Relations Act was unconstitutional, or if constitutional, not applicable to the respondents; that the sole employer of the persons named in the complaint was Marjorie Fainblatt, so that the respondent, Benjamin Fainblatt, was not a proper or necessary party; that on January 2, 1937, Marjorie Fainblatt sold and conveyed the Somerset Manufacturing Company to Benjamin Fainblatt; that the number of employees had increased from 58 at the time of the Board's hearing, to 200; that no election had ever been held at the plant for the purpose of having the employees select their representatives; that attempts to settle differences between the respondents and Local No. 149 had proven futile; and that since the date of the strike a number of the employees had returned to work. The petition asked leave to adduce additional evidence in support of the allegations set forth therein. On October 15, 1937, the Court ordered that the respondents have leave to adduce additional evidence; and that such additional evidence be taken before the Board, its member,

agent or agency, together with any findings thereon, and be made a part of the transcript of the record in this cause.

Pursuant to notice, duly served upon the parties, a hearing was held in New York City on October 22, 1937, before Robert M. Gates, the Trial Examiner duly designated by the Board. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to the parties. At the outset of the hearing, the Board's attorney objected to the reopening of the proceeding, and to the granting of the petition for leave to adduce additional evidence. The Board called no witnesses at this hearing, and merely cross-examined witnesses for the respondents.

The rulings of the Trial Examiner on motions and on objections to the introduction of evidence are hereby affirmed. The objection of the respondents to questioning on the subject of the details of the transfer of Somerset Manufacturing Company in January, 1937, is hereby denied. In view of the order to be made, we do not need to consider other objections upon which no rulings were made.

Upon the entire record in the case the Board makes the following supplementary:

FINDINGS OF FACT

At the conclusion of the second hearing, the respondents moved to dismiss the complaint on three specific grounds: namely, that there was no testimony that Harry A. Posner represented the employees, or that an election was ever held in which he had

been selected; that the respondents were not engaged in interstate commerce; and that the charges ought to be dismissed against Benjamin Fainblatt because, at the time the unfair labor practices are alleged to have occurred, he was nothing more than an employee of Somerset Manufacturing Company, herein called Somerset. The question of interstate commerce has been discussed in the first opinion, and the testimony at the second hearing adds little to that already in the record. We shall review the other objections and then consider the additional evidence bearing upon the discriminatory discharges and other acts of interference with self-organization.

In the petition for leave to adduce additional evidence, the respondents insisted that Benjamin Fainblatt was not a proper or necessary party. The testimony of Benjamin Fainblatt at the first hearing in regard to the ownership of Somerset was as follows:

“Q. In what capacity are you associated with these two companies?

A. I am the owner.

Q. Complete owner?

A. Complete owner.

Q. Are you in charge of operations?

A. I am in charge of my own factory . . .”

“Q. Who is Marjorie Fainblatt?

A. My daughter.

Q. Does she have any ownership interest?

A. No.

Q. She is employed by you?

A. Well, she is and she is not.

Q. In what way is she not?

A. Just merely she is helping me as a daughter a father.

Q. Then is not—

A. Not as an employee.”

“Q. Marjorie Fainblatt is registered here in Somerville under a trade name also?”

A. She has registered under the name of Somerset Manufacturing Company.

Q. She is registered here under that name?

A. Yes.

Q. And operates with the Lee Sportswear Company as a partner; is that it?

A. She is a partner in that firm there.

Q. So that although she is a partner of Lee Sportswear, she is here in your plant working with you?

A. No, sir, she is not in my plant, she only comes in.

Q. But she is a registered owner with your company?

A. She is a registered owner, but I am working myself there.

Q. You registered—you testified before that you were the complete owner.

A. Yes.

Q. How is she registered here as a part owner?

A. In place, not to conflict with the what you call them—the code authorities—so as not to have any trouble—so, we went to work and I made Somerset and I gave her the permission to—

Q. Then her registration, in fact means nothing?

A. No, positively nothing."

At the second hearing, Marjorie Fainblatt testified:

"Q. Were you the sole owner of that business? Known as the Somerset Manufacturing Company?

A. I was."

Q. Did Benjamin Fainblatt have any association with the Somerset Manufacturing Company?

A. Only as my manager.

Q. He was not the owner of the Somerset?

A. He was not."

Q. Are you the owner of the Somerset Manufacturing Company today?

A. No, I am not.

Q. Have you disposed of your interest in the Somerset?

A. I have.

Q. And when did that take place?

A. At the beginning of the year.

Q. Do you remember the month?

A. January.

Q. Who became the owner?

A. Benjamin Fainblatt."

Marjorie testified further that she had sold Somerset to her father on January 1, 1937, in return for his assumption of the liabilities of that company. These liabilities included a chattel mortgage on the

machinery. This mortgage is held by Lee Sportswear Company a partnership composed of Fainblatt's children, Marjorie, Lee and Irving. She also testified that as yet her father had made no payments on any of the liabilities, and that she still had a power of attorney, "just in case anything happens to Benjamin".

Upon all the testimony, we find that Benjamin Fainblatt has been, and is now, the real owner of Somerset, and that Marjorie was merely a nominal registered owner. Because of the alleged change in nominal ownership, the Board will amend its order by making it applicable to Benjamin Fainblatt and Marjorie Fainblatt, individuals doing business under the firm name and style of Somerset Manufacturing Company, and to their successors and assigns.

The respondents consistently advanced the claim that Local No. 149 had never been designated by the employees, inasmuch as no election to select a bargaining representative had ever been held by the employees. Under Section 9 (a) of the Act, employees need not hold an election to determine their representatives for purposes of collective bargaining. The only requirement is that such representatives be designated or selected by a majority of the employees in an appropriate unit. On the basis of the evidence submitted at the first hearing, the Board found that Local No. 149 had been so designated. No evidence submitted at the second hearing can be said to contradict this. Nor was any evidence introduced to contravert the Board's previous finding that the respondents on and after Septem-

ber 6, 1935, refused to bargain collectively with Local No. 149 as such representative of its employees.

The Board therefore reiterates what it said in regard to the violation of Section 8 (5) of the Act. That violation is not affected by any subsequent change in the situation. However, testimony that the number of permanent employees in the plant has risen from 59 to approximately 200 is uncontradicted. Two years have now elapsed since the respondents' first refusal to bargain collectively, which precipitated the strike. The Board has no evidence before it as to the present membership in Local No. 149 among the greatly increased force now employed. In view of these circumstances, the Board will amend its order by striking out that part which requires the respondents to bargain collectively with Local No. 149. This does not mean, of course, that the respondents are relieved of their obligations under Section 8 (5), of the Act, or that if the Union now or subsequently is designated by a majority of the employees in an appropriate unit, the respondents may refuse to bargain collectively with it.

With respect to the discriminatory discharges and the various acts of interference found by the Board in its first decision, neither the petition for leave to adduce evidence, nor the motion to dismiss, challenges the findings of the Board as to these matters. In fact, the evidence brought forward by the respondents at the second hearing fully corroborates the conclusions previously reached by the Board. Thus the new testimony discloses that the discharges did not take place because of poor work; that work was not slack at that time; that new workers have

replaced the old employees and that the respondents have made no attempt to recall the discharged employees.

The other measures taken by the respondents to thwart the organization of their employees, and the methods of coercion they employed, are now revealed by the respondents' own witnesses. In general, these witnesses took the position that they knew little or nothing about the activities of Local No. 149. Thus on direct examination, Ruth Evans, forelady, denied that she had ever spoken to Benjamin Fainblatt, Orshan Ruby, supervisor of production, or anyone else, about Local No. 149, or that she had ever attended a meeting at which it was discussed. On cross-examination she was confronted with the testimony of Ruby, that he had spoken to her several times about Local No. 149, and that she had told him from time to time that the shop was being organized. Mrs. Evans then said that she did not recall whether Ruby had ever spoken to her.

That the respondents must have known the names of those active in Local No. 149, before the strike, is clear from other evidence. The testimony of Ruby, which follows, is especially instructive in view of the purported lack of knowledge of the activities of Local No. 149:

"Q. Who is this one girl that would tell you about the Union?

A. I think her name was Vermilyea.

Q. Vermilyea what?

A. I don't know her second name.

Q. Is she still working for you.

A. No, she is not.

Q. Did she keep you advised of all the things that the Union boys and the Union girls were doing?

A. That is right.

Q. Would she tell you what would go on at the meetings?

A. She would from time to time. I don't know whether she did tell me the truth or not, but she used to come and tell me.

Q. Did she tell you that all during the period of time up until the strike took place?

A. Well, I would not say. For about a week or so.

Q. Did you learn from her that Fay Katz was active in the Union?

A. I have not learned from her anything of the kind.

Q. Now, you don't want to contradict yourself, do you?

A. I do not.

Q. Now, you told me that she told you all the things about the Union.

A. That does not mean to say I have learned anything from her. I have heard from her, that is about all.

Q. Heard what, about Fay Katz?

A. About Fay Katz, what is the difference Fay Katz or any of the other girls.

Q. No difference.

A. She used to come and tell me; this one and the other.

Q. She would tell you about particular individuals?

A. She would.

Q. You don't deny she told you about Fay Katz?

A. I do not.

Q. You don't deny she told you about these other girls Mr. Gerofsky asked you?

A. She did.

Q. She did?

A. Yes."

Thus the testimony brought forward by the respondents at the second hearing, far from establishing a defense, merely serves to further implicate the agents and supervisory officials of the respondents. The respondents have shown no sign of complying with the provisions of the Act, but, on the contrary, have more clearly evidenced their desire to evade their responsibilities under the Act. On this state of the record, we see no reason for modifying the order of the Board, dated June 3, 1936, with the exception of those changes noted above; and we hereby reaffirm that order.

Order

On the basis of the foregoing findings and supplementary findings of fact and conclusions of law and pursuant to Section 10 (c) and (e), the National Labor Relations Board hereby orders that the respondents, Benjamin Fainblatt and Marjorie Fainblatt, individuals doing business under the firm name and style of Somerset Manufacturing Company, their successors and assigns shall:

1. Cease and desist from:

(a) In any manner interfering with, restraining, or coercing their employees in the exercise of their right to join and assist Local No. 149 of the International Ladies' Garment Workers' Union or any other Labor organization;

(b) Discouraging membership in Local No. 149 of the International Ladies' Garment Workers' Union or in any other labor organization of their employees by discharging, refusing to reinstate, or otherwise discriminating in regard to tenure or terms of employment against employees who have joined or assisted Local No. 149 or any other labor organization of their employees;

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Elizabeth Schoka, Lorraine Heitz, Ethel Rice, Angelina Matteis, Mary Gecik, Fay Katz, Anna Santoro, and Theresa Yemma, immediate and full reinstatement to their former positions without prejudice to any rights and privileges previously enjoyed.

(b) Offer employment to all employees of the tailoring department who went on strike on September 18, 1935, or within one week thereafter where positions held by such employees on September 18, 1935, are now held by persons who were not employees of the respondents on September 18, 1935, but were employed subsequently thereto, and place all other employees who struck on September 18, 1935, or within the following week on a preferential list to be offered employment according to their senior-

ity in respondents' employment, as and when their labor is needed.

(c) Make whole said Elizabeth Schoka, Lorraine Heitz, Ethel Rice, Angelina Matteis, Mary Gecik, Fay Katz, Anna Santoro and Theresa Yemma for any loss of pay they have suffered by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which she would normally have earned as wages during the period from the date of her discharge to the date of such offer of reinstatement, less earnings from other employment during such period.

(d) Post notices in conspicuous places in the plant stating (1) that the respondents will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of thirty (30) consecutive days.

Signed at Washington, D. C., this 17th day of December, 1937.

J. WARREN MADDEN,

Chairman.

EDWIN S. SMITH,

Member.

DONALD WAKEFIELD SMITH,

Member.

*National Labor Relations
Board*

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, Bertram Katz, being first duly sworn, on oath saith that I am one of the employees of the Na-

tional Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 17th day of December, 1937, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Supplemental Decision and Order to the following named persons, addressed to them at the following addresses:

Alexander Feller, Esquire
Schenck Bldg.
41-43 Paterson St.
New Brunswick, N. J.,
Leon Gerofsky, Esq.
Central Building
Somerville, N. J.

BERTRAM KATZ.

Subscribed and sworn to before me this 17th day of December 1937.

HAROLD G. WILSON,
Notary Public,
District of Columbia.

My commission expires May 15, 1941.
(Seal)

Return Receipt

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Alexander Feller
(Signature or name of addressee)

Edith Hess
(Signature of addressee's agent)

Date of delivery, Dec. 18, 1937

(On Back)

Registered Article No. 69043.

Insured Parcel

(Stamp) Registered Somerville, N. J., Dec. 18, 1937.

Return to National Labor Relations Board

(Name of Sender)

Street and Number, }

or Post Office Box, }

WASHINGTON,

D. C.

Return Receipt

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Leon Gerofsky

(Signature or name of addressee)

(Signature of addressee's agent)

Date of delivery Dec. 18, 1937

(On Back)

Registered Article No. 69044.

Insured Parcel

(Stamp) New Brunswick, N. J., Dec. 18, 1937.

Return to National Labor Relations Board

(Name of Sender)

Street and Number, }

or Post Office Box, }

WASHINGTON,

D. C.

**SUPPLEMENTAL CERTIFICATE OF THE
NATIONAL LABOR RELATIONS
BOARD.**

The National Labor Relations Board, by its Secretary, duly authorized by Section 1 of Article VI of the Rules and Regulations of the National Labor Relations Board, series 1 as amended, effective April 28, 1936, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a supplemental proceeding held pursuant to an order of this Court filed October 15, 1937, entitled "In the Matter of Benjamin Fainblatt and Marjorie Fainblatt, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company and International Ladies' Garment Workers Union, Local No. 149", the same being Case No. C-53 before said Board, such transcript including the pleadings, testimony and evidence upon which the supplemental order of the Board in said proceeding was entered, and including also the supplemental findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Notice of hearing issued by the National Labor Relations Board on October 15, 1937.
 2. Copy of order designating Robert M. Gates Trial Examiner, dated October 20, 1937.
- Documents listed hereinabove under items 1 and

2 are contained in the Exhibits and included under the following item:

3. Stenographic transcript of the testimony before Robert M. Gates, Trial Examiner of the National Labor Relations Board, on October 22 and 25, 1937, including all exhibits introduced in evidence.

4. Copy of supplemental decision, findings of fact, conclusions of law, and order issued by the National Labor Relations Board on December 17, 1937, together with affidavit of service and United States Post Office return receipts thereof.

IN TESTIMONY WHEREOF, the Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 22nd day of December, 1937.

NATHAN WITT,
Secretary.
National Labor
Relations Board

(Seal)

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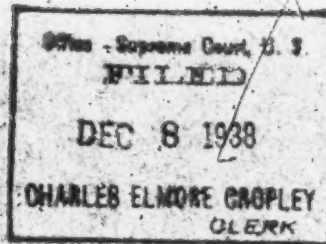
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514
No. —

In the Supreme Court of the United States

OCTOBER TERM, 1938

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

BENJAMIN FAINBLATT AND MARJORIE FAINBLATT,
INDIVIDUALS, DOING BUSINESS UNDER THE FIRM
NAME AND STYLES OF SOMERVILLE MANUFACTUR-
ING COMPANY AND SOMERSET MANUFACTURING
COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE THIRD
CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1938

No. _____

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v. *a*

BENJAMIN FAINBLATT AND MARJORIE FAINBLATT,
INDIVIDUALS, DOING BUSINESS UNDER THE FIRM
NAME AND STYLES OF SOMERVILLE MANUFACTUR-
ING COMPANY AND SOMERSET MANUFACTURING
COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE THIRD
CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Third Circuit entered on July 28, 1938, denying the petition of the National Labor Relations Board for enforcement of its order against Benjamin Fainblatt and Marjorie Fainblatt, individuals, doing business under the firm name and style of Somerset Manufacturing Company.

OPINIONS BELOW

The original findings of fact, conclusions of law, and order of the National Labor Relations Board (I. R. 467-495)¹ are reported in 1 N. L. R. B. 864. The supplemental findings of fact and the amended order (II. R. 227-239) are reported in 4 N. L. R. B. 596. The opinion and dissenting opinion in the Circuit Court of Appeals (I. R. 514-521) are reported in 98 F. (2d) 615.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 28, 1938 (I. R. 521). A petition for rehearing filed by the National Labor Relations Board (I. R. 521-522) was denied on September 8, 1938 (I. R. 522). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTION PRESENTED

Whether the National Labor Relations Act may be validly applied to respondents, employers whose business consists of the processing of materials belonging to others, where the major portion of such materials are delivered to such employers through the channels of interstate commerce and, after

¹ The record in the court below is in two volumes, separately paged. Volume II contains the supplemental proceedings pursuant to the order of the court below dated October 15, 1937 (II. R. 13-14). The first volume will be referred to herein as "I. R." and the second as "II. R."

processing, are in large part distributed through the channels of interstate commerce.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 49, U. S. C. Supp. III, Title 29, Sec. 151 *et seq.*) are set out in the Appendix, *infra*, p. 16.

STATEMENT

Pursuant to Section 10 (b) of the National Labor Relations Act, the National Labor Relations Board, on January 28, 1936, issued a complaint (I. R. 10-10), a copy of which, together with a notice of hearing (I. R. 11), was duly served upon respondents. The complaint alleged, in substance, that respondents had engaged in unfair labor practices affecting commerce within the meaning of Section 1, subdivisions (1), (3), and (5), and Section 2, subdivisions (6) and (7), of the Act (I. R. 10). Respondent answered on February 4, 1936 (I. R. 10-16). On February 15, 1936, the Board, acting pursuant to Article II, Section 35, of its Rules and Regulations, Series 1, as amended, transferred the case to itself (I. R. 468). A hearing was held on February 17, 18, and 19, 1936, before a Trial Examiner designated by the Board (I. R. 17-431). Respondents, although they appeared at the hearing and were offered full opportunity to participate, called no witnesses and introduced no evidence. Thereafter, the Board directed the Trial Examiner

to prepare an intermediate report, which was duly filed and served upon respondents (I. R. 433-467). On June 3, 1936, the Board issued findings of fact, conclusions of law, and order (I. R. 469-495).

On June 17, 1937, the Board, pursuant to Section 10 (e) of the Act, petitioned the United States Circuit Court of Appeals for the Third Circuit for the enforcement of its order (I. R. 500-508). Thereupon respondents filed with the court a petition for leave to adduce additional evidence before the Board (II. R. 1-12), alleging in substance that they had failed to call witnesses and introduce evidence at the former hearing because they then believed that the Act was unconstitutional, or, if constitutional, not applicable to respondents, and that the situation at the plant had changed in several material respects since that time. On October 15, 1937, the court granted the petition (II. R. 13-14). Thereupon a second hearing was held on October 22 and 25, 1937, before a Trial Examiner duly designated by the Board (II. R. 18-226). On December 17, 1937, the Board issued a supplemental decision (II. R. 227-239) in which it reaffirmed its original findings of fact, conclusions of law and order, except that the order was modified in one respect referred to below. The facts, as found by the Board and supported by the evidence, may be summarized as follows:

The nature of respondents' business.—Respondents Benjamin Fainblatt and Marjorie Fainblatt are individuals doing business under the name of

Somerset Manufacturing Company,² with their plant at Somerville, New Jersey (I. R. 473-474).

Respondents are engaged in the processing of materials into various types of women's sport clothing (I. R. 474). They perform their work exclusively upon materials owned and supplied by Lee Sportswear Company, a partnership located in New York City (I. R. 474). The raw materials upon which respondents work is usually first cut by the Lee Sportswear Company in New York City and then shipped to respondent in New Jersey. Sometimes the raw material is shipped at the order of Lee Sportswear Company directly to respondents from the mills, many of which are outside the State of New Jersey (I. R. 474-475). Title to the material remains throughout in Lee Sportswear Company (I. R. 474).

As soon as possible after the raw material is received it is made up into finished garments, which are then delivered to a representative maintained by Lee Sportswear Company at respondents' plant (I. R. 475). Some are shipped directly to customers of Lee Sportswear Company throughout the United States; the rest are shipped to the company itself in New York City (I. R. 475).

Throughout the year ~~there~~ is a constant flow of shipments of raw material from points outside the State of New Jersey to respondents' plant, and of

² Respondents also at one time registered their business as Somerville Manufacturing Company. This name was discontinued in February 1935 (I. R. 473-474).

finished goods from the plant to New York City and other points outside New Jersey (I. R. 476). Respondents apparently finished a thousand or more dozens of finished garments each month in 1934 and 1935 (I. R. 490). In 1937, at the time of the supplemental hearing, respondents had increased their working force from 60 to approximately 200 employees (II. R. 234), and their output may be assumed to have increased in like fashion.

The unfair labor practices.—Following the invalidation of the National Industrial Recovery Act respondents instituted a series of severe wage cuts among their employees (I. R. 477). As a consequence, a number of workers employed in respondents' tailoring department joined Local No. 149, International Ladies Garment Workers, Union (hereinafter referred to as the Union) and endeavored to organize the plant (I. R. 477-478). Respondents, learning of the employees' action, openly opposed the unionization campaign (I. R. 487). The mayor and the sheriff of Somerville, among others, were engaged by respondents to speak to the employees and attempt to dissuade them from joining the Union (I. R. 487-488). Between August 14 and September 18, 1935, respondents discharged eight women employees of the tailoring department because of their Union activity (I. R. 481-487, 492). In each case, the employee at the time of her discharge was told that she had been "making too much trouble" (I. R. 482, 484, 485-486, 486), or that if she wanted work she

could "go to the Union" (I. R. 483, 484, 485). None of the eight has been reinstated (I. R. 489).

On August 30, 1935, Harry A. Posner, business manager, of the Union, having been designated by a majority of the employees in the tailoring department, an appropriate unit, as their representative for collective bargaining (I. R. 476-479), presented to Benjamin Fainblatt certain demands for the improvement of working conditions in the plant (I. R. 479). Fainblatt took the proposals under consideration, but on September 6, when Posner again spoke to Fainblatt, the latter said that he would have nothing to do with a union, and that he did not recognize Posner as the legal representative of his employees (I. R. 479-480). As a result, all the members of the Union went on strike on September 18, 1935 (I. R. 480), causing a considerable diminution in respondents' operations (I. R. 490). The strike was still in progress at the time of the original hearing (I. R. 480).

About two weeks after the strike began, Posner again attempted to open negotiations, but was informed by respondents' representative that "Mr. Fainblatt would not talk union or recognize anybody that had any connection with the union" (I. R. 480). At some later date another meeting was had, which also was fruitless (I. R. 480-481).

On the basis of these findings, the Board concluded that respondents had engaged in unfair labor practices affecting commerce within the

meaning of Section 8, subdivisions (1), (3) and (5), and Section 2, subdivisions (6) and (7) of the Act. It therefore entered an order (I. R. 493-495) requiring respondents to cease and desist from such actions; to reinstate to their former positions, with back pay, the employees found to have been discriminated against; to offer reinstatement to employees who had gone on strike where the positions held by such employees on the date of the strike were held by persons subsequently employed, and to place other strikers on a preferred list, to be offered employment when needed. In its order entered after the supplemental hearing (II. R. 237-239) the Board, because of evidence that respondents had greatly increased their working force, and a lack of evidence of the then membership in the Union, struck out the provisions of its original order which had required respondent to bargain collectively with the Union.

On July 28, 1938, the Circuit Court of Appeals for the Third Circuit denied the Board's petition for enforcement of its order (I. R. 521). Speaking through Judge Buffington, the court disposed of the case solely on the ground that respondents were not engaged in interstate commerce, and that the Act could not constitutionally be applied to them. Judge Biggs dissented (I. R. 517). On September 8, 1938, the Board's petition for rehearing (I. R. 521-522) was denied (I. R. 522).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that the National Labor Relations Act could not validly be applied to respondents' operations.
2. In holding that the buying, selling, or transporting of raw materials or finished products in interstate commerce is a prerequisite to the application of the Act to a manufacturing enterprise.
3. In not holding that respondents, by their actions, had violated Section 8, subdivisions (1), (3) and (5) of the Act.
4. In denying enforcement to the Board's order.

REASONS FOR GRANTING THE WRIT

I

The court below has decided a question of the constitutional power of Congress in a way probably in conflict with the applicable decisions of this Court. The court below conceded that if the Act may validly be applied to respondents, the Board's order should be enforced. The sole question presented, therefore, is that of the power of Congress under the Constitution.

The facts stated above, pp. 4-6, show that a constant flow of goods moves in interstate commerce to respondents' plant in New Jersey, and that after prompt manufacture into finished products the goods pass again through the channels of interstate commerce to all parts of the United States. The

case, in other words, would be precisely similar to other cases in which this Court has sustained the application of the National Labor Relations Act to manufacturing enterprises, but for the single fact that title to the goods is never in respondents. It is this factor which is relied upon by the court below.

We submit that the holding of the court below that this factor serves to distinguish the prior decisions of this Court entirely misconceives the basis of those decisions. In *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, the Court emphasized that Congress has power under the commerce clause of the Constitution to protect interstate commerce from burdens, obstructions, and interferences whatever may be their source. Activities in production industries such as respondents', which, when viewed separately, are local, may nonetheless, by virtue of their close and immediate relation to interstate commerce, be brought within the power of Congress. "It is the effect upon commerce, not the source of the injury, which is the criterion." 301 U. S. at 32. Since the decision below, the power of Congress in such situations has been strongly reaffirmed in *Consolidated Edison Co. v. National Labor Relations Board*, Nos. 19, 25, decided December 5, 1938. Clearly, in the present case, a strike or lockout resulting from a denial of the rights guaranteed by Section 7 of the Act would, and did (I. R. 490), burden the flow of commerce to and from respondents' plant. Title to the goods is irrelevant.

Many decisions, under both this and other stat-

utes, have made it clear that the niceties of title have no bearing upon the power of Congress to prevent burdens and obstructions to the flow of commerce. In *Santa Cruz Fruit Packing Co. v. National Labor Relations Board*, 303 U. S. 453, the employer contended that he was not subject to the Act, since his sales were all f. o. b. points in California. The Court specifically rejected the contention. 303 U. S. at p. 463. See also *National Labor Relations Board v. Friedman-Harry Marks Clothing Co.*, 301 U. S. 58, 72. In related fields, the Court has sustained the power of Congress to regulate commission merchants in the stockyards, although they took no title to the livestock, and to regulate grain exchanges, although they did not themselves engage in buying or selling grain. *Stafford v. Wallace*, 258 U. S. 495; *Chicago Board of Trade v. Olsen*, 262 U. S. 1.

II

The decision of the court below is also in conflict with two decisions of the Circuit Court of Appeals for the Second Circuit, *National Labor Relations Board v. National New York Packing & Shipping Co., Inc.*, 86 F. (2d) 98, and *National Labor Relations Board v. Hopwood Retinning Co., Inc.*, 98 F. (2d) 97. In the *National New York* case, that court held the Act might validly be applied to a company whose business consisted of the consolidating and arranging for transportation of packages received from or destined to out-of-state points. In the *Hopwood* case, the Act was held applicable to a company engaged in retinning and

servicing milk and ice cream containers belonging to out-of-state dairies and creameries (cf. 4 N. L. R. B. 922, 926). In neither case did the company have any title to or interest in the goods which were the subject of commerce. Yet in each case the jurisdiction of the Board was sustained.²

III

The decision below is of substantial public importance. It denies to Congress a power which it seems clearly to possess, and is, therefore, significant beyond the confines of the particular industry of which respondent is a part. Moreover, in that industry the decision would have a peculiarly widespread effect. The women's clothing industry, one of the largest and most important in the United States,³ is one of the few major American indus-

² The subsequent decision in *National Labor Relations Board v. Fashion Piece Dye Works, Inc.*, decided November 28, 1938, in which a differently constituted court in the Third Circuit distinguished the present case and upheld the jurisdiction of the Board, does not change the situation. The court, speaking of the present case, said:

"That case, however, is clearly distinguishable and is not controlling here because there it appeared that Fainblatt engaged in no interstate transportation whatever, whereas in the case before us the respondent itself transported at least fifty percent of the textiles to be processed into the state and the same percentage of the finished product out of the state."

Even as so limited, the decision is still completely inconsistent with the decisions of this Court, and in conflict with *National Labor Relations Board v. National New York Packing & Shipping Co.*, 86 F. (2d) 98 (C. C. A. 2d).

³ In the year 1933, the latest for which comparative figures are furnished by the Bureau of the Census, the industry

tries in which the "contract" method of production⁴ is still widely prevalent. In the year 1935, for example, of a total of 3,414 enterprises engaged in manufacturing women's dresses, 1,676, employing 63,202 workers, were shops in which a single firm owns, manufactures, and sells the finished product to the retailer,⁵ while 1,738, employing 48,217 workers, were "contract" shops.⁶ In the New York metropolitan area, the center of the American garment industry,⁷ a survey made in 1935 revealed that 69 per cent of the enterprises engaged in manufacturing women's dresses, employing 78 per cent of the workers in the industry, were "contract" shops.⁸

ranked ninth among manufacturing industries in number of workers employed, and eighth in value of product. United States Biennial Census of Manufacturers (Commerce Department, 1933), p. 33.

⁴ "Contract" production may be defined as a method in which a "contractor" performs productive operations upon materials owned and furnished by a "jobber" who, in addition, usually designs the garment, cuts the cloth, and sells the finished product.

⁵ The respondent in *National Labor Relations Board v. Friedman-Harry Marks Clothing Co.*, 301 U. S. 58, was an enterprise of this character. See 301 U. S. at 72-73.

⁶ United States Biennial Census of Manufacturers (Commerce Department, 1935), p. 33.

⁷ In the year 1935 the total value of women's, misses', and children's clothing produced in the United States was \$1,269,624,289, of which \$883,375,777, or approximately 69 percent was produced in New York State. *Id.*, p. 398.

⁸ See Sherman Trowbridge, *Some Aspects of the Women's Apparel Industry*, in United States National Recovery Administration, *Work Materials*, No. 44 (1936), p. 53.

CONCLUSION

The decision below is in probable conflict with applicable decisions of this Court. It conflicts with decisions in another Circuit Court of Appeals. The questions raised are of substantial public importance. Wherefore, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Third Circuit should be granted.

ROBERT H. JACKSON,
Solicitor General.

CHARLES FAHY,
General Counsel,
National Labor Relations Board.

DECEMBER 1938.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Supp. III, Title 29, Sec. 151 *et seq.*) are as follows:

SEC. 2. When used in this Act—

* * * *

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * * *

SEC. 10 (a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *



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CLERK

No. 514

In the Supreme Court of the United States

OCTOBER TERM, 1938

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

BENJAMIN FAINBLATT AND MARJORIE FAINBLATT,
INDIVIDUALS, DOING BUSINESS UNDER THE FIRM
NAME AND STYLES OF SOMERVILLE MANUFACTUR-
ING COMPANY AND SOMERSET MANUFACTURING
COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD



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OPINIONS BELOW

The original findings of fact, conclusions of law, and order of the National Labor Relations Board (I. R. 469-495) are reported in 1 N. L. R. B. 864.

The record in the court below is in two volumes, separately paged. Volume II contains the supplemental proceedings pursuant to the order of the court below, dated October 15, 1937 (II. R. 13-14). The first volume will be referred to herein as "I. R." and the second as "II. R."

The supplemental findings of fact and the amended order (II. R. 227-239) are reported in 4 N. L. R. B. 596. The opinion and dissenting opinion in the Circuit Court of Appeals (I. R. 514-521) are reported in 98 F. (2d) 615.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 28, 1938 (I. R. 521). A petition for rehearing filed by the National Labor Relations Board was denied on September 8, 1938 (I. R. 522). Petition for certiorari was filed on December 8, 1938, and was granted on January 9, 1939 (I. R. 523). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTION PRESENTED

Whether the National Labor Relations Act may be validly applied to respondents, employers whose business consists of the processing of materials belonging to others, where the major portion of such materials are delivered to such employers through the channels of interstate commerce and, after processing, are in large part distributed through the channels of interstate commerce.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat.

449, U. S. C. Supp. III, Title 29, Sec. 151 *et seq.*) are set out in the Appendix, *infra*, p. 30.

STATEMENT

Pursuant to a charge (I. R. 1-3) filed by Local 149, International Ladies' Garment Workers' Union, a labor organization hereinafter termed the Union, the National Labor Relations Board, on January 28, 1936, issued a complaint and notice of hearing, which were duly served upon respondents (I. R. 4-11). The complaint alleged, in substance, that respondents had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3) and (5), and Section 2 (6) and (7) of the Act. Respondents appeared specially and filed an answer on February 4, 1936, in which they denied the allegations of the complaint and challenged the constitutionality and applicability of the Act (I. R. 12-16). On February 15, 1936, the Board, pursuant to Article II, Section 35, of its Rules and Regulations, Series 1, transferred the case to itself (I. R. 468, 471). A hearing was held on February 17, 18, and 19, 1936, before a Trial Examiner designated by the Board (I. R. 16-431). Respondents, although they appeared at the hearing and had full opportunity to participate, called no witnesses and introduced no evidence, but confined their participation to cross-examination of the Board's witnesses. Twice during the hearings respondents moved to dismiss the com-

plaint on constitutional grounds (I. R. 18-19, 430-431). Thereafter, pursuant to Article II, Section 36 (a) of its Rules and Regulations, Series 1, the Board directed the Trial Examiner to prepare an intermediate report, which was duly filed and served upon respondents (I. R. 432-467). Respondents did not file exceptions to the intermediate report and did not request oral argument or leave to submit briefs to the Board, although specifically advised of their right to make such application (I. R. 431). On June 3, 1936, the Board issued its findings of fact, conclusions of law, and order (I. R. 469-495).

Respondents neither complied with the order nor petitioned any Circuit Court of Appeals for its review. On June 17, 1937, two months after the decisions of this Court sustaining the constitutionality of the Act, the Board, pursuant to Section 10 (e) of the Act, petitioned the court below for the enforcement of its order (I. R. 500-508). On October 2, 1937, respondents filed with the court a petition for leave to adduce additional evidence before the Board on the grounds that they had failed to call witnesses and introduce evidence at the hearing because they then believed that the Act was unconstitutional, or, if constitutional, not applicable to respondents, and that the situation at the plant had changed in several respects since that time (II. R. 1-12). The court, we think erroneously, granted this petition (II. R.

13-14, 20-21), and a second hearing was held pursuant to notice on October 22 and 25, 1937, before a Trial Examiner designated by the Board (II. R. 14-226). Respondents produced and examined their witnesses. On December 17, 1937, the Board issued a supplemental decision (II. R. 227-239) in which it made findings of fact upon the additional evidence received and reaffirmed its original findings of fact, conclusions of law, and order, except that the order was modified in one respect referred to *infra* (note 9, pp. 11-12). The facts, as found by the Board and supported by the evidence, may be summarized as follows:

1. *The nature of respondents' business.*²—Respondents Benjamin Fainblatt and Marjorie Fainblatt are individuals doing business under the name of Somerset Manufacturing Company,³ with their plant at Somerville, New Jersey (I. R. 473-474; III. R. 230-233). They are engaged in the business of tailoring textile fabrics into various types of women's sport clothing (I. R. 474). Neither the materials nor the finished products belong to respondents, but are the property of Lee

² The facts with relation to the jurisdiction of the Board are more fully detailed at pp. 15-17, *infra*.

³ Both this title and that of "Somerville Manufacturing Company" were registered by respondents under the New Jersey Business Names Act (N. J. Compiled Stat. § 3686, Sup. 2528, Sup. 1781 [1931]) and both were used interchangeably until February 1935, when the latter title was discontinued (I. R. 473-474, 20-21).

Sportswear Company, a partnership located in New York City, composed of other members of the Fainblatt family, which pays respondents for their manufacturing operations on a piece-work basis (I. R. 474-475).⁴ The materials are sent to respondents' plant both from the plant of Lee Sportswear Company in New York City and directly from the mills, some of which are located outside the State of New Jersey (I. R. 474-475). The finished garments are sent either to Lee Sportswear Company in New York City or to the customers of that concern in other sections of the United States (I. R. 475).

There is a constant and substantial flow of materials and finished products to and from respondents' plant across state lines (I. R. 476). Respondents' output consisted of more than a thousand dozens of finished garments per month in 1934 and 1935 and has probably been even more substantial since 1937, when respondents increased their production staff from 60 to 200 (I. R. 490; II. R. 234).

⁴A plant such as that of respondents' is known as a contract shop—i. e., one owned by an independent contractor who performs tailoring or other manufacturing operations upon materials owned by a "jobber" or "contract-manufacturer" who designs the garment and sells the finished product. Zaretz, *The Amalgamated Clothing Workers of America* (1934), pp. 25-27; Levine, *The Women's Garment Workers* (1924), pp. 398-401; United States Biennial Census of Manufacturers (Commerce Department, 1933), p. 180.

2. *The unfair labor practices.*³—Following the invalidation of the National Industrial Recovery Act in May 1935 respondents instituted a series of severe wage cuts among their employees (I. R. 477; 163-164, 198-201, 238-242, 262, 304, 344). About thirty-four of the fifty-odd employees in the tailoring department, found by the Board to constitute a unit appropriate for collective bargaining (I. R. 476-477), thereupon joined the Union in an effort to improve their wages and working conditions (I. R. 477-478; 120-123, 155, 185, 223-224, 252-255, 259-260, 275-277, 401; II. R. 171-172; Bd. Exhs. 3-44). Respondents immediately sought, through coercion and intimidation, to deny to their employees the right of free self-organization guaranteed in the Act. They invited the mayor and sheriff of Somerville and the owner of the factory building to the plant, where these persons delivered speeches against the Union to the employees (I. R. 487-488; 105-107, 169-173, 271-274, 300, 347-348, 363-365; II. R. 25-28, 35-36, 40-46, 56, 58, 65, 91-92). Respondents' supervisor of production was kept informed by one of the employees concerning who was active in the Union and what occurred at

³ The record references in this portion of the Statement refer first to the Board's findings and then to the evidence upon which they are based. Since the court below expressly held that the Board's order should be enforced if respondents are subject to the Act (I. R. 514), and since respondents do not challenge the Board's findings as to the unfair labor practices, the evidence supporting those findings will not be discussed except in this Statement.

the Union meetings (II. R. 235-237, 95-97). Leon Gerofsky, respondents' attorney, testified that he had questioned the employees whether they had been invited to attend Union meetings and whether they had been asked to select a collective bargaining representative (II. R. 216-217).

A principal means of intimidation was that which is specifically forbidden by Section 8 (3) of the Act—discharge of employees by reason of their union membership or activities. Between August 14 and September 18, 1935, respondents discharged eight women employed in the tailoring department who were active in the Union.⁶ Some of these eight were questioned concerning their Union activities by their supervisors shortly before their discharges (I. R. 482, 485-486; 231-234, 267, 304-308, 328, II. R. 68-77, 81-83, 115-122). In some cases the employees were informed at the time of their discharges that "you are causing too much trouble" (I. R. 482, 484, 486; 327-328, 347, 362, 378-380). The record reveals no "trouble" other than their being active in the Union. The others

⁶ The group discharged included two of the three women who had first approached the Union and asked it to organize respondents' plant—Ethel Rice and Anna Santoro (I. R. 477; 117-120, 167-168, 181, 193, 211-212, 231, 308, 309). Four of those discharged were active in the Union's organization campaign (I. R. 482-485, 487; 193-194, 217, 219, 251, 265-266, 284-285, 331, 345-346, 385). All were members of the Union (I. R. 481-485; Bd. Exhs. 3-10; I. R. 193, 212, 242-243, 265, 274-275, 302, 327, 331, 349, 360-361, 375).

were told that there was no more work for them and that they could "go to the Union for work" (I. R. 482-485; 96-97, 192-193, 203, 236-238, 271, 304-308, 362). It was the busy season and there was plenty of work (I. R. 486-487; II. R. 234-235; I. R. 40, 221, 236-238, 271, 379). Moreover, while layoffs for lack of work were normally short, and were customarily terminated by notice from respondents that work was again available (I. R. 487; 295, 323-324, 332-333, 357, 365, 370, II. R. 129-130), the eight employees here involved were never notified to return, although new and inexperienced workers were subsequently hired, and at least one of the discharged employees applied for work several times (I. R. 487, 491; II. R. 234-235; I. R. 65-66, 82, II. R. 82-83, 85-88). The one or two girls who had attended the first Union meeting but had not joined were still at work at the time of the first hearing (I. R. 335, 355, 390).

On September 6, 1935, the Union was the authorized representative of the employees in the tailoring department for purposes of collective bargaining (I. R. 477-479; 120-123, 149, 252-254, 322, 394-403, 417, 454-455, 166, 219, 253, 319, 351, 366). On that day Posner, the Union agent, tele-

The photostatic copy of respondents' payroll for the week ending September 7, 1935, incorporated into the record pursuant to stipulation (I. R. 410-411; II. R. 152-153), lists 61 employees in the tailoring department, including all eight of the employees discriminatorily discharged. A comparison of this list with the union application cards admitted into

phoned Benjamin Fainblatt and requested his answer to certain demands theretofore presented by the Union (I. R. 479-480; 123-125). Posner testified that Fainblatt stated that "he will have no

evidence (Bd. Exhs. 3-44) shows that 33 of the employees in the unit had selected the union as their bargaining agent prior to September 6 (Rice, Heitz or Vones, Katz, Santora, Schoka, Matteis, Gecik, Yemma, Cicero, Torquato, Wirzman, Field, Turchi, Bachilega, Melewski, Hyling, Mosetti, Senna, Spatt, Hicks, della Peruta, Horan, Zigler, Morano, Recchia, Anna Lee, de Mattina, Hobbs, Kozar, Kolenda, Kelly, Felchin, Barone; payroll numbers 45, 81, 13, 36, 72, 75, 25, 16, 63, 66, 59, 63, 3, 17, 67, 76, 9, 4, 46, 50, 52, 64, 68, 14, 27, 29, 30, 18, 41, 2, 37, 26, 33; Bd. Exhs. 3-10, 12, 13, 15, 17-23, 25-31, 33-36, 38, 40-42). There are no union cards for 28 of the girls on the payroll (Grill, Koposock, Van Nest, Ackerman, Bethelm, Kopf, Guisepp, Drake, Bartley, Pacale, Zashwiega, Plum, Vadinski, Bonner, Sator, de Melio, Skercho, Schnitzer, Elgaren, Rodinbaugh, Techam, Rhodies, Bierros, Phatiadors, Korwalzah, Gabinelli, Totten, Potter). There are nine additional union cards bearing names which do not appear on the September 7 payroll (Helen Lee, Gutowski, Nicastro, Pisane, Guiseppantonio, Milano, Demko, Petrone, Mame Ross; Bd. Exhs. 11, 14, 16, 24, 32, 37, 39, 43, 44).

The Union members thus constituted a clear majority of the 61 on the payroll at the time of the refusal to bargain. The bargaining unit of 59 found by the Board was computed by excluding eight employees who appeared on the payroll but did no work for the two-week period ending September 7 and adding back the six of these whose idleness was due to discriminatory discharge and who therefore remained employees within the meaning of the Act (I. R. 478-479). The record does not reveal the reasons why the other two (Pacale and Bierros) did not work during the two-week period. As shown above, even if they were included in the bargaining unit, bringing the number of employees in the unit to 61, the Union represented a clear majority of the 61.

dealings with me and he will not have anything to do with a union and that he does not recognize me as the legal representative of the workers" (I. R. 480; 125). The employees who were members of the Union thereupon unanimously voted to strike on September 18, which they did (I. R. 480-481; 53-54, 122, 125-128, 131, 189, 287-288). The Union's efforts to reopen negotiations for a settlement of the strike were thereafter rebuffed, respondents' attorney stating that "Mr. Fainblatt would not talk union or recognize anyone that had any connection with the union" (I. R. 480; 154, 156, 130, II. R. 211-212). The strike was still in progress at the time of the Board's first hearing (I. R. 480; 249, 285, 329, 337-338).

The Board's conclusions of law and order.— Upon the findings and evidence summarized above, the Board concluded that respondents had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3) and (5) and Section 2 (6) and (7) of the Act (I. R. 481, 491-493). The order, as modified,² required re-

² Benjamin Fainblatt testified that at a subsequent meeting he told Posner that "before I will have an outsider running my business, I will get out of it and call it quits" (I. R. 98-102, 150-151; see II. R. 214, I. R. 115-116). According to Posner, respondents thereafter offered to reinstate the strikers individually provided they "dropped union affiliations" (I. R. 489; 156-157, 152-153, 115).

³ The Board's original order required respondents to cease and desist from refusing to bargain with the Union as the exclusive representative of the tailoring employees and to bargain with the Union as such representative upon request

spondents to cease and desist from violating Section 8 (1) and (3); to reinstate with back pay the eight employees wrongfully discharged; to offer reinstatement, without back pay, to employees who went on strike where the positions they had left were filled by new employees first hired after the strike, and to place the remaining strikers on a preferred list, to be offered reinstatement as labor is needed; and to post appropriate notices (II. R. 238-239).

On July 28, 1938, the Circuit Court of Appeals for the Third Circuit, Circuit Judge Biggs dissenting, denied the Board's petition for enforcement of the foregoing order (I. R. 521). The majority, in an opinion by Circuit Judge Buffington in which District Judge Dickinson concurred, held that the order should be enforced if the Board had jurisdiction to issue it (I. R. 514), but that the Act could not be constitutionally applied to respondents for the reasons that they were not engaged in interstate commerce and did not purchase or sell goods

(I. R. 494). At the hearing to adduce additional evidence held pursuant to order of the court below (*supra*, p. 4), it appeared that respondents' tailoring staff had been increased to 200 employees (II. R. 234; 189-190). Since there was no evidence as to the membership in the Union at that time, the Board amended its order by striking out the provisions based upon the violations of Section 8 (5) (II. R. 234; 238-239). It is the supplemental order which was sought to be enforced in the court below. The appropriateness of the provision of that order requiring the reinstatement of employees who went on strike as a direct result of respondents' violations of the law is discussed at pp. 24-29, *infra*.

in such commerce (I. R. 514-517). Judge Biggs, dissenting, thought that since respondents' operations were part of a continuous flow of interstate commerce which industrial strife at the Somerville plant would burden and obstruct, the order should be enforced under the applicable decisions of this Court (I. R. 517-521). On September 8, 1938, the Board's petition for rehearing was denied (I. R. 522). The petition for certiorari was granted on January 9, 1939 (II. R. 523).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that the National Labor Relations Act could not validly be applied to respondents' operations.

2. In holding that the buying, selling, or transporting of raw materials or finished products in interstate commerce is a prerequisite to the application of the Act to a manufacturing enterprise,

3. In not holding that respondents, by their actions, had violated Section 8 (1), (3) and (5) of the Act.

4. In denying enforcement to the Board's order.

SUMMARY OF ARGUMENT

I

Respondents are engaged in the manufacture of women's clothing from materials brought to their plant principally from other States. The finished products are distributed from the plant to other sections of the United States. Stoppage of operations

as a result of industrial strife between respondents and their employees would, therefore, directly obstruct the movement of substantial quantities of goods in interstate commerce. The National Labor Relations Act, accordingly, may validly be applied to respondents' relations with their employees. *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1.

This conclusion is not affected by the fact that the materials and finished products do not belong to respondents. The Act may not be avoided on the plea that the commerce which respondents' labor practices affect is not respondents' commerce, but that of their customer. *Consolidated Edison Co. v. National Labor Relations Board*, Nos. 19, 25, decided December 5, 1938. The niceties of title to goods have no relevance to the validity of an exercise of the commerce power under this statute when the actual movement of the goods is interstate. *Santa Cruz Fruit Packing Co. v. National Labor Relations Board*, 303 U. S. 453. In all determinative aspects respondents' enterprise is no different from the many manufacturing establishments of moderate size which have been held subject to the Act. *National Labor Relations Board v. Friedman-Harry Marks Clothing Co.*, 301 U. S. 58; *National Labor Relations Board v. Fruehauf Trailer Co.*, 301 U. S. 49.

The formula offered by respondents would remove from federal protection large amounts of interstate commerce which strife in the "contract

shops" would burden and obstruct. There is no constitutional justification for the suggested basis of limiting the power of Congress.

ARGUMENT

I

RESPONDENTS' MANUFACTURING OPERATIONS HAVE A CLOSE AND INTIMATE RELATION TO A SUBSTANTIAL FLOW OF INTERSTATE COMMERCE

The facts upon which the jurisdiction of the Board is based in this case are not in dispute. Respondents are engaged at Somerville, New Jersey, in the manufacture of women's sportswear (I. R. 20-22, 48). At the time of the unfair labor practices in the fall of 1935 respondents employed some 60 workers; but in 1937 the number of employees was increased to approximately 200 (I. R. 401; II. R. 189-190). The volume of business done is shown by the fact that before the increase in respondents' staff approximately 2,050 dozen finished garments were shipped from the plant during September 1934 and 1,230 dozen during the following September, when the strike occurred (I. R. 72-76, 78-80; see I. R. 490).

Respondents' plant is a so-called "contract shop" (see note 4, p. 6, *supra*). The manufacturing operations are performed exclusively upon materials owned by the Lee Sportswear Company, a partnership located in New York City, and composed of members of the Fainblatt family, which retains title to the materials and the finished prod-

ucts and pays respondents for their services on a piece-work basis (I. R. 21, 24, 26-30, 88-91).¹⁰ Lee Sportswear Company, usually ships the materials, mainly cotton and wool textiles, either in cut or uncut form, from its New York plant to respondents' plant in New Jersey (I. R. 23-24, 29, 54-55, 92-93). Not infrequently the Lee Sportswear Company causes such materials to be shipped directly to respondents from the mills, some of which are located outside the State of New Jersey (I. R. 24-27, 92). As soon as possible after delivery of the materials, respondents' manufacturing operations are performed (I. R. 39-40). When these are completed, respondents hand the product over at Somerville to Sol Fainblatt—a son of respondent Benjamin Fainblatt—who occupies space in respondents' plant as a representative of Lee Sportswear Company (I. R. 50-52, 84-85, 87, II. R. 182-183). Sol Fainblatt ships some of the goods to

¹⁰ The majority opinion in the court below quotes what it terms "contradictory and unwarranted findings" by the Board to the effect that respondents "caused substantial amounts of raw materials and finished goods to be purchased, transported, and sold in interstate commerce" (I. R. 516-517). The portion of the record referred to by the court in support of this statement (I. R. 470) consists of a summary, in the Board's decision, of the allegations of the complaint. The sentence quoted by the court is not a finding of fact at all. The Board's findings upon the nature of respondents' business appear at I. R. 473-476 and are fully supported by the evidence. This patent error by the court was pointed out in the Board's petition for rehearing, denied on September 8, 1938 (I. R. 522).

customers of the Sportswear Company located "throughout the United States"; the rest he sends back to the Lee Sportswear Company's plant in New York City (I. R. 52, 88-90).

It thus appears that there is a steady and almost daily (see I. R. 34) stream of materials across State lines to respondents' plant and of finished products from that plant to various parts of the United States. These movements of commerce are occasioned only by the existence of respondents' enterprise and will continue only while respondents' operations continue (see II. R. 191). Upon these facts, the test of the Act's application laid down in *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41, "whether 'stoppage of * * * operations by industrial strife' would result in substantial interruption to the free flow of interstate commerce, is clearly satisfied.

Respondents contend, however, that the single factor relied upon by the court below—that respondents do not own the goods flowing to and from their plant—negatives any federal power to protect this commerce by regulating their labor practices. The argument is, in effect, that respondents' creation of burdens and obstructions to commerce may not be prevented by Congress because that commerce is the commerce of respondents' sole customer and not of respondents.

The same contention was rejected by this Court in *Consolidated Edison Co. v. National Labor Relations Board*, Nos. 19, 25, decided December 5, 1938. The Court's opinion in that case sets forth as the basis of federal power the many effects upon commerce which would result from an interruption of the services furnished by the utilities involved. The commerce which the effects so enumerated would burden confessedly was that of enterprises other than the utilities. In accordance with the controlling principle that "It is the effect upon commerce, not the source of the injury, which is the criterion" (*National Labor Relations Board v. Jones & Laughlin Steel Corp.*, *supra*, at p. 32), the fact that the commerce interrupted would be that of someone other than the one whose labor practices caused the burden was not deemed relevant. In related fields this Court has sustained the power of Congress to regulate businesses not themselves engaged in interstate commerce but whose practices caused obstructions to the commerce carried on by others. *United States v. Ferger*, 250 U. S. 199; *Stafford v. Wallace*, 258 U. S. 495; *Chicago Board of Trade v. Olsen*, 262 U. S. 1. Cf. *Local 167 v. United States*, 291 U. S. 293.

Similarly, this Court has specifically held that the niceties of title have no bearing upon the power of Congress to prevent the burdens and obstructions to the flow of commerce which result from industrial strife. In *Santa Cruz Fruit Packing Co. v.*

National Labor Relations Board, 303 U. S. 453, the employer contended that he was not subject to the Act, since the goods which he shipped out of California were sold f. o. b. points in that State. The Court dismissed the contention, stating that (303 U. S. at p. 463):

A large part of the interstate commerce of the country is conducted upon that basis and the arrangements that are made between seller and purchaser with respect to the place of taking title to the commodity, or as to the payment of freight, where the actual movement is interstate, do not affect either the power of Congress or the jurisdiction of the agencies which Congress has established.

To the same effect are *National Labor Relations Board v. Friedman-Harry Marks Clothing Co.*, 301 U. S. 58, 72; *National Labor Relations Board v. Wallace Manufacturing Co.*, 95 F. (2d) 818, 819 (C. C. A. 4th); *Clover Fork Coal Co. v. National Labor Relations Board*, 97 F. (2d) 331, 334 (C. C. A. 6th).

The Circuit Court of Appeals for the Second Circuit has twice sustained the Board's jurisdiction over businesses engaged in rendering services upon goods belonging to others, where the goods passed to or from the servicing plants in interstate commerce. *National Labor Relations Board v. National New York Packing & Shipping Co., Inc.*, 86 F. (2d) 98; *National Labor Relations Board v. Hopwood Retinning Co.*, 98 F. (2d) 91. In the former

case the employer's business consisted of the consolidating and otherwise arranging for transportation of packages received from or consigned to out-of-state points. In the *Hopwood* case the employer was engaged in repairing milk and ice-cream containers belonging to out-of-state concerns and brought to the plant across state lines (4 N. L. R. B. 922, 926).

The fact that title to the materials and the finished products is at all times in Lee Sportswear Company is therefore not material to the Board's jurisdiction. In all other interstate characteristics respondents' enterprise is indistinguishable from the many manufacturing establishments of moderate size held subject to the Act by this Court and the Circuit Courts of Appeals in an uniform line of decisions.¹¹

¹¹ *National Labor Relations Board v. Fruehauf Trailer Co.*, 301 U. S. 49; *National Labor Relations Board v. Friedman-Harry Marks Clothing Co.*, 301 U. S. 58; *Santa Cruz Fruit Packing Co. v. National Labor Relations Board*, 303 U. S. 453; *National Labor Relations Board v. Fashion Piece Dye Works*, decided November 28, 1938 (C. C. A. 3rd); *Jeffery-DeWitt Insulator Co. v. National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 302 U. S. 731; *National Labor Relations Board v. Wallace Manufacturing Co.*, 95 F. (2d) 818 (C. C. A. 4th); *National Labor Relations Board v. J. Freezer & Son*, 95 F. (2d) 849 (C. C. A. 4th); *National Labor Relations Board v. Eagle Manufacturing Co.*, 99 F. (2d) 930 (C. C. A. 4th); *National Labor Relations Board v. Bell Oil & Gas Co. et al.*, 91 F. (2d) 509 (C. C. A. 5th); *Renown Store Company v. National Labor Relations Board*, 90 F. (2d) 1017 (C. C. A.

The doctrine advocated by respondents would remove from federal protection interstate commerce of large bulk and intrinsic importance, even if limited to this one industry. In the large and important women's clothing industry¹² the "contract shop" is a prevalent method of production. In the year 1935, of a total of 3,414 enterprises engaged in manufacturing women's dresses, 1,676 employing 63,202 workers, were shops in which a single firm owns, manufactures, and sells the

6th); *Memphis Furniture Manufacturing Co. v. National Labor Relations Board*, 96 F. (2d) 1018 (C. C. A. 6th) certiorari denied, No. 272, October 10, 1938; *Clover Fork Coal Co. v. National Labor Relations Board*, 97 F. (2d) 331 (C. C. A. 6th); *National Labor Relations Board v. Kentucky Firebrick Co.*, 99 F. (2d) 89 (C. C. A. 6th); *National Labor Relations Board v. Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th), certiorari denied 304 U. S. 575; *National Labor Relations Board v. Oregon Worsted Co.*, 94 F. (2d) 671 (C. C. A. 9th); *National Labor Relations Board v. American Potash and Chemical Corporation*, 98 F. (2d) 488 (C. C. A. 9th); *National Labor Relations Board v. Biles Colson Lumber Co.*, 98 F. (2d) 18 (C. C. A. 9th).

¹²In the year 1933, the latest for which comparative figures are furnished by the Bureau of the Census, the women's clothing industry ranked ninth among manufacturing industries in number of workers employed, and eighth in value of product. In that year the industry furnished employment to 159,832 wage earners and produced a product valued at \$846,300,000. United States Biennial Census of Manufactures (Commerce Department, 1933), p. 33. This excluded corsets, millinery, gloves, footwear, and hosiery, all classified under other industries. United States Biennial Census of Manufactures (Commerce Department, 1931), p. 324.

finished product to the retailer,¹³ while 1,738, employing 48,217 workers, were "contract shops."¹⁴ In the New York metropolitan area, the center of the American garment industry,¹⁵ a survey made in 1935 revealed that 69 per cent of the enterprises engaged in manufacturing women's dresses, employing 78 per cent of the workers in the industry, were "contract shops."¹⁶

¹³ The respondent in *National Labor Relations Board v. Friedman-Harry Marks Clothing Co.*, 301 U. S. 58, was an enterprise of this character. See 301 U. S. at 72-73.

¹⁴ United States Biennial Census of Manufactures (Commerce Department, 1935); p. 33. In the men's clothing industry in that year "contract shops" made up 1,230 of a total of 2,981 establishments, employing 56,282 wage earners out of a total of 154,583. *Id.*, p. 28. During 1935 about 400 of the 700 members of the National Association of Dress Manufacturers, Inc., operated "contract shops": Gill, *The Dress Manufacturing Industry* (U. S. National Recovery Administration, Evidence Study No. 9, 1935), p. 23. In the men's clothing and children's wear industries the "contractors" have their own associations: Hathcock, *The Men's Clothing Industry* (U. S. National Recovery Administration, Evidence Study No. 24, 1935), p. 34; Gill, *Infants' and Children's Wear Industry* (U. S. National Recovery Administration, Evidence Study No. 19 (1935), p. 18.

¹⁵ In the year 1935 the total value of women's, misses', and children's clothing produced in the United States was \$1,262,624,289, of which \$883,375,777, or approximately 69 percent, was produced in New York State. United States Biennial Census of Manufactures (Commerce Department, 1935), p. 398.

¹⁶ See Sherman Trowbridge, *Some Aspects of the Women's Apparel Industry*, in United States National Recovery Administration, *Work Materials*, No. 44 (1936), p. 53.

If manufacturing enterprises are to be exempt from the Act for the single reason that the goods upon which their manufacturing operations are performed do not belong to them, a ready means is afforded for avoidance of federal control. By what Judge Biggs, dissenting in the court below, termed "an arbitrary separation of the manufacturing unit" from the supply and marketing unit (I. R. 520), a manufacturing enterprise which in its totality is indisputably engaged in interstate commerce, may withdraw its relations with its production employees from federal control although the commerce affected by those relations remains the same.¹⁷ The Act's application is thus made to de-

¹⁷ Prior to August 1934, respondent, Benjamin Fainblatt, was general supervisor of the Lee Sportswear Company's manufacturing department in New York City (I. R. 474, 108). After a dispute with the union representing the employees at that plant was settled by arbitration, Benjamin Fainblatt established the present business at Somerville, New Jersey, for doing the same kind of work as was formerly done in the manufacturing department in New York (I. R. 474, 109-113). Orshan Ruby, supervisor of production at the Somerville plant since its establishment, was formerly manager of Lee Sportswear Company's Long Island shop (II. R. 68, 91). Benjamin Fainblatt testified that Lee Sportswear Company supplied the necessary capital, receiving a chattel mortgage on the machinery (I. R. 474, 112-113) and that very little of this advance had been repaid at the time of the hearing (I. R. 113). Marjorie Fainblatt testified that she purchased the machinery and "loaned" it to Benjamin (II. R. 191-192). Lee Sportswear Company is a partnership composed of respondent Marjorie Fainblatt and two of Benjamin Fainblatt's sons, Leo and Irving (I. R. 474, 46-47, 94, II. R. 181). On these facts the Board

pend upon a factor which is irrelevant to the purposes for which Congress exercised its power over commerce in this statute, and to the settled bases of the validity of that exercise of power.

There is no constitutional justification for the limiting of federal control over commerce which respondent urges. Congress is granted power to protect all interstate commerce, not merely selected portions thereof. This power cannot be limited by the particular arrangements made as to title by businesses whose very existence depends upon the movements of goods through the channels of interstate trade.

II

THE REQUIREMENT THAT RESPONDENTS REINSTATE THE STRIKERS IS ENTIRELY PROPER UNDER THE ACT

The court below stated that the order of the Board should be enforced if respondents are subject to the Act (I. R. 514); and respondent does not urge the merits as a ground for affirmance of the decree below. We would therefore not deal with the particular provisions of the order in this brief but for the fact that the basis for one provision of the order has not heretofore been fully stated to this Court. We set out below a brief statement of the Board's position.

was fully warranted in finding that "though technically an independent enterprise, the Somerset Manufacturing Company thus operates in fact as the principal manufacturing department of Lee Sportswear, a company engaged in selling sporting goods in interstate commerce" (I. R. 475-476).

Paragraph 2 (c) of the order requires respondent to offer employment to those of the striking employees whose positions are now held by employees first hired after the strike began, and to place the remaining strikers upon a preferential list to be offered employment according to seniority as labor is needed. No back pay is required (II. R. 238-239).

The power of the Board cannot be questioned. The Board found (I. R. 481), and it is undisputed, that the strikers ceased work in connection with a strike directly caused by respondent's refusal to bargain with the Union. They therefore remained employees within both categories of Section 2 (3) individuals who have ceased work "as a consequence of, or in connection with, any current labor dispute" and individuals who have ceased work "because of any unfair labor practice." Consequently they are directly within the grant of power to the Board in Section 10 (c) to require "such affirmative action, including reinstatement of employees, with or without back pay, as will effectuate the policies of this Act."

It is equally clear that the reinstatement order is an appropriate exercise of power. The policies of the Act are effectuated by restoring, as nearly as possible, the situation which obtained prior to respondents' unlawful refusal to bargain with the Union. Respondents' violation of the law caused the strike, and their persistence in refusing thereafter to observe the obligations of the Act pro-

longed the strike by eliminating all possibility of a settlement through negotiation. The Act is based on the premise that peaceful negotiation will avoid or settle industrial disputes. *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 44, 45; *Virginian Ry. Co. v. System Federation No. 40*, 300 U. S. 515, 548. Respondents, therefore, cannot say that negotiation would not have avoided the strike, or yielded a settlement after the strike occurred. Respondents cannot rebut the presumption that the strikers reinstated by the order would have remained at or returned to their work except for the refusal to bargain.

Those out of work in direct consequence of respondents' violations of the law should not be penalized because they exercised the right to strike—a right expressly preserved by the Act (Section 13). Their only other offense was that they asserted the rights to self-organization and collective bargaining guaranteed them by Congress. The policies of the Act require that the status existing prior to respondents' unfair labor practices and the employees' resultant efforts to force respondents to conform their labor practices to the law of the land be reestablished. At the very least, this requires reinstatement of the strikers in preference to those hired to fill their positions after the strike began. Otherwise, those who assert their right to strike thereby lose the rights of self-organization and collective bargaining guaranteed by the Act.

Reinstatement of strikers, where the strike was caused or prolonged by the employer's refusal to bargain with the duly authorized representatives of his employees, uniformly has been sustained by the Circuit Courts of Appeals as the normal means of effectuating the policies of the Act. *National Labor Relations Board v. Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d), certiorari denied, 304 U. S. 576; ¹⁸ *Black Diamond S. S. Corp. v. Na-*

¹⁸ In the *Remington Rand* case, as here, the strike was caused by the employer's violations of Section 8 (5). The Board ordered reinstatement of the strikers to positions available on May 26, 1936, when the strike began. The following excerpts from the Court's opinion show the rationale whereon it approved the reinstatement provision (94 F. (2d) at 871, 872):

The act expressly preserves the right to strike, section 13, 29 U. S. C. A. § 163, and that includes a strike for refusing to negotiate as well as any other. It is a remedy parallel with recourse to the Labor Board: its use, when unsuccessful, but in a controversy where the men are right, ought not therefore to be prejudicial to them. Moreover—and this is conclusive—the remedy which the act provides expressly includes reinstatement as a part of it. It is of course true that the consequences are harsh to those who have taken the strikers' places: strikes are always harsh; it might have been better to forbid them in quarrels over union recognition. But with that we have nothing to do: as between those who have used a lawful weapon and those whose protection will limit its use, the second must yield: and indeed, it is probably true today that most men taking jobs so made vacant, realize from the outset how tenuous is their hold. * * * It is of course possible that the parties might have split over wages, or over the Elmira plant, even if the respondent had negotiated with the Joint Board. But since the refusal was at least one cause of the strike, and was a tort—a "subtraction"—it rested upon the tortfeasor to disentangle the consequences for which it was chargeable

tional Labor Relations Board, 94 F. (2d) 875 (C. C. A. 2d), certiorari denied, 304 U. S. 559; *Jeffery-DeWitt Insulator Co. v. National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 302 U. S. 731; *National Labor Rela-*

from those from which it was immune. Since it cannot show that the negotiations, if undertaken, would have broken down, it cannot say that the loss of the men's jobs was due to a controversy which the act does not affect to regulate. There may be cases where an employer can show this: if he can, it would indeed load the scales in an industrial dispute to give back their jobs to the strikers: but the respondent did not try to show that further negotiation would have been fruitless.

¹⁰ In the *Black Diamond* case the strike occurred prior to any unfair labor practices, but on December 14, during the strike, the employer refused to bargain collectively. The Board ordered reinstatement of the strikers to positions available on that date. The court said (94 F. (2d) at 879):

Since the act expressly leaves the right to strike unaffected, any remedies they had were unaffected by continuing on strike. When, on December 14, 1936, the *Black Diamond* refused to bargain with the certified bargaining agent of its employees, it violated the act and became subject to such orders of the Board "as will effectuate the policies of this Act." Section 10 (c), 29 U. S. C. A. § 160 (c).

From the date of the respondent's first unfair practice its ordinary right to select its employees became vulnerable.

under section 2 (3) of the act, 29 U. S. C. A. § 152 (3), the striking engineers still remained employees, and to "effectuate the policies of this act," section 10 (c) 29 U. S. C. A. § 160 (c), no more is done than to maintain the status quo which existed on December 14, 1936, as against unfair labor practices which occurred thereafter.

tions *Board v. Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th), certiorari denied, 304 U. S. 575; *National Labor Relations Board v. Biles Coleman Lumber Co.*, 98 F. (2d) 18 (C. C. A. 9th). We submit that this relief is entirely proper under the Act and that the provision requiring respondents to reinstate the strikers should be enforced.

CONCLUSION

For the reasons above set forth it is respectfully submitted that the judgment of the court below should be reversed, with directions to enforce the order of the Board.

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National Labor Relations Board.

JANUARY 1939.



APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Supp. III, Title 29, Sec. 151 *et seq.*) are as follows:

SEC. 2. When used in this Act—

* * * * *

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * * * *

SEC. 10 (a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 514.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

BENJAMIN FAINBLATT and MARJORIE FAINBLATT,
individuals doing business under the firm name and
styles of Somerville Manufacturing Company and
Somerset Manufacturing Company.

**BRIEF FOR RESPONDENT IN THE MATTER OF A PETI-
TION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE
THIRD CIRCUIT.**

✓ LEON GEROFISKY,

Counsel for the Respondent.

T. GIRARD WHARTON,

Associate Counsel.

JOSEPH HALPERN,

Associate Counsel.

December, 1938.



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IN THE
Supreme Court of the United States

OCTOBER TERM, 1938.

No. 514.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

BENJAMIN FAIBLATT and MARJORIE FAIBLATT, individuals doing business under the firm name and styles of Somerville Manufacturing Company and Somerset Manufacturing Company.

**BRIEF FOR RESPONDENT IN THE MATTER OF A
PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE THIRD CIRCUIT.**

The respondent prays that the petitioner, National Labor Relations Board, be denied a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Third Circuit entered on July 28, 1938, denying the petition of the National Labor Relations Board for enforcement of its order against Benjamin Faibblatt and Marjorie Faibblatt formerly doing business under the name and style of Somerset Manufacturing Company.¹

¹ Marjorie Faibblatt was the former owner of the Somerset Manufacturing Company and conveyed her entire interest in the business to Benjamin Faibblatt in the month of January, 1937, and is in no way associated with the Somerset Manufacturing Company, H. R. 147. The record in the court below is in two volumes separately paged. The first volume is herein referred to as "I. R." and the second as "H. R."

Opinions Below.

The findings conclusions and order of the National Labor Relations Board (I. R. 467-495) are reported in I. N. L. R. B. 864. The supplemental findings and the amended order (II. R. 227-239) are reported in 4 N. L. R. B. 596. The opinion in the Circuit Court of Appeals for the Third Circuit is reported in 98 F. (2d) 615.

Question Presented.

Whether the National Labor Relations Act may be validly applied to respondent whose business is purely local, who does not purchase any raw materials, who does not sell the finished product, and who neither transports the raw products nor the finished garment.

Statement.

The statement of the case contained in the petition filed herein is somewhat brief and lacks essential details which must be considered before reviewing the opinion below.

THE NATURE OF THE RESPONDENT'S BUSINESS:—Respondent employed fifty-eight employees at the time of the original hearing in this cause. The business was solely that of manufacturing, as stipulated between counsel for the Labor Board and the respondent, I. R. 88-89. The raw material worked upon by the respondent is owned by the Lee Sportswear Company of New York City, and is shipped to the respondent in New Jersey under the direction and expense of the Lee Sportswear Company. It is received at Somerville, New Jersey, by the respondent and it is

then processed into garments. Upon completion of the manufacturing process, the finished garments are turned over to the representative of Lee Sportswear Company at Somerville, New Jersey, who then directs the shipment at the expense of Lee Sportswear Company. The respondent does not, in the course of his business operations, buy or sell raw materials, or finished garments. He does not ship, nor does he have facilities for shipment. His is a business solely of manufacturing. I. R. 88-89-90-92. Title to the material remains throughout in the Lee Sportswear Company, I. R. 474.

The record I. 84-91 shows that Benjamin Fainblatt, respondent, was the sole owner of a small garment manufacturing plant in the Borough of Somerville, New Jersey, receiving from time to time orders from a partnership in New York called the Lee Sportswear Company which was engaged in marketing women's sports garments.

The respondent had no interest in the partnership and the partnership firm had no interest in the plant or business of the respondent. The Lee Sportswear Company, hereinafter called the Lee Company, owned all of the tailoring material involved. The Lee Company's material from time to time was cut in New York by Lee Company and shipped in trucks employed by it to the respondent's factory, hereinafter called Somerville. Following the processing from the raw material to the completion of the garment by the Somerville Company, the finished product was turned over at Somerville to trucks employed by the Lee Company for delivery either to the Lee Company at New York or its customers as directed by it. To complete such arrangement the Lee Company maintained a representative in the respondent's factory, I. R. 87.

The material was owned by Lee Company and the respondent had no control, ownership or interest in the material sent by the Lee Company, or in the tailored article. *He was paid for the tailoring work he did*; no one but himself was interested in his factory and the profits arising therefrom were included in his personal income tax return, I. R. 90, 113, 114.

Specification of Reasons for Denying the Writ.

The Court below was correct:

1. In holding that the National Labor Relations Act could not be validly applied to respondent's business.
2. In holding that the business of the respondent is wholly of an intra-state nature.
3. In denying the enforcement of the Board order.

Reasons for Denying the Writ.

Before presenting the reasons for denying the writ in the instant case, it must first be pointed out and brought to this Court's attention, that the petitioner has included in its petition, certain allegations which should not be considered by the Court in deciding the application. The allegations are to be found on pages 12 and 13 of the petition. The statistics appearing therein are self-serving statements which appear for the first time in this cause. They were never proved by the petitioner in the proceedings before the Tri-

Examiner, nor were they used or brought out in any subsequent proceedings.

It is admitted that if the respondent is engaged in interstate commerce, he is subject to the provisions of the National Labor Relations Act. *Washington, Virginia and Maryland Coach Company v. National Labor Relations Board*, 85 F. (2d) 990 (C. C. A. 4) affirmed 301 U. S. 142. It is further admitted that if respondent is engaged in both interstate and intra-state commerce, he is not only subject to the Act with respect to the employees actually engaged in the interstate portion of such business, but also with respect to the employees engaged in the intra-state portion of said business, if an interruption in said business would directly affect the interstate business, *Virginia Railway Company v. System Federation*, 300 U. S. 515. On the other hand, it is equally clear that if an employer is engaged in purely local activities, and neither buys nor sells in any quantity in interstate commerce, he is not subject to the provisions of the National Labor Relations Act, since the Act applies to employers engaged in interstate commerce, Section 2, para. (6) of the Act, and employers whose business affect interstate commerce, Section 2, par. (7), of the Act. Clearly, respondent is not affected by Section 2, par. (6), of the Act, and the only remaining question is whether or not Section 2, par. (7), is applicable to him.

It is submitted, that where Congress attempts to regulate intra-state commerce or an operation not involving commerce at all, such as manufacturing, the direct effect of the legislation must be to protect

or to prevent injury to, or obstruction of, interstate commerce. The operation of the National Labor Relations Act is so limited by its very terms. (See definition of phrase "affecting commerce" Section 2, par. (7).) This Court in discussing this particular section of the National Labor Relations Act, in the case of *National Labor Relations Board v. Jones and Laughlin Steel Corporation*, 301 U. S. 1, 81 L. ed. 893, said, at page 31:

"This definition is one of exclusion as well as inclusion. The grant of authority to the Board does not purport to extend to the relationship between all industrial employees and employers. Its terms do not impose collective bargaining upon all industry, regardless of effects upon interstate or foreign commerce. It purports to reach only what may be deemed to burden or obstruct that commerce and, thus qualified, it must be construed as contemplating the exercise of control within constitutional bounds. It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the congressional power."

The petitioner contends that the labor difficulties in the respondent's shop at Somerville, New Jersey, come within the purview of both Section 2, par. (7) of the National Labor Relations Act, and the above quoted excerpt from the *Jones and Laughlin Steel Corporation* case, *supra*, and in support thereof, *inter alia*, cite the following cases:

Stafford v. Wallace, 258 U. S. 495;

Chicago Board of Trade v. Olsen, 262 U. S. 1.

National Labor Relations Board v. Fashion Piece Dye Works, Inc., decided November 28, 1938, C. C. A. (3d) 6559;

National Labor Relations Board v. Hopwood R. Co., 98 F. (2d) 97;

National Labor Relations Board v. Jones and Laughlin Steel Corp., *supra*;

National Labor Relations Board v. Fruehauf Trailer Co., 301 U. S. 49;

National Labor Relations Board v. Friedman-Harry Marks Clothing Co. Inc., 301 U. S. 58;

National Labor Relations Board v. Santa Cruz Fruit Packing Company, 91 Federal (2d) page 790, affirmed 303 U. S. 452.

It is respectfully submitted that the cases cited above are not applicable to the case at Bar, because the facts in those cases are entirely different than those in the present case. In none of the cases decided by this Court, and relied upon by the petitioner, has this Court stated that every intra-state business necessarily affects and burdens commerce within the purport of Section 2, par. (7) of the National Labor Relations Act. In fact this Court stated in the *Jones and Laughlin* case, *supra*, at page 32:

"Whether or not particular action does affect commerce in such a close and intimate fashion as to be subject to Federal Control, and hence to lie within the authority conferred upon the Board, is left by statute to be determined as individual cases arise. We are thus to inquire whether in the instant case the constitutional boundary has been passed."

It then becomes necessary to examine the cases relied upon by the petitioner, in order to differentiate them from the case at bar, and to show that the facts in each particular case, were of such nature, that the Court was justified in deciding that the National Labor Relations Act was applicable to their particular business, and therein held that the business operations similar to respondent's in the case at bar were not subject to the Act.

Stafford v. Wallace, supra;

Chicago Board of Trade v. Olsen, supra.

The petitioner cited the *Wallace* and *Olsen* cases, *supra*, for the purpose of showing that this Court has sustained the power of Congress to regulate businesses that did not involve buying or selling without the State. It is true that under those cases Congress has the power to regulate commerce, merchants and stockyards and grain exchanges. However, those cases involved another point with which the Court was mainly concerned. In the *Stafford* case, Congress, after many investigations, found that individual packing houses were taking advantage of their control over the stockyards and connected facilities to control the price of material and although Congress undertook to regulate the activities of the stockyards in that phase of commerce and dealers in similar subjects, the Court found that although the act of Congress was literally a matter of one regulating a local activity, yet those activities were connected with the general current of commerce to a substantial degree. The *Olsen* case involved the Grain Futures Act providing for the direct regulation of the practices of grain exchanges, the primary object being to control dealings in grain futures, and in the first instance, it did so through the device of a prohibitory

tax later invalidated by the Supreme Court in *Hill v. Wallace*, 259 U. S. 44. The second attempt to regulate future trading came, after a series of investigations into the abuses in future trading had led to the conclusion that such trading, unless subjected to regulation, *could have disastrous effects upon commerce in grains*. The Court upheld the Grain Futures Act in the *Olsen* case although the activities of the grain exchanges and their members were purely local in character, applying a theory similar to that applied in the *Stafford* case. *The influence of those cases, namely, the Olsen case and the Stafford case, is not as broad as one might think*. In the *Stafford* case the Government was primarily concerned with preventing a conspiracy to restrain interstate trade and setting up some method of punishing such a conspiracy and the Court felt that if Congress could punish for a conspiracy to restrain interstate trade, it was a necessary consequence that it could provide means for preventing such conspiracies from the outset. *Both the Olsen and the Stafford cases dealt with a situation that involved a focal point through which the stream of commerce shifted on its way from producer to the ultimate consumer*. Both decisions took a practical view of commerce and avowed that the power of Congress was not to be defeated by the fact that its objects were merely local incidents of interstate commerce.

*National Labor Relations Board v. Jones
and Laughlin Steel Corp., supra.*

Briefly the facts in that case were as follows:

- (1) The respondents owned and operated its own mines in various states—the source of its raw mate-

rials; (2) The company owned and operated its own steamboats and other transportation facilities to bring the raw materials to its mills in Pennsylvania; (3) It operated elaborate wholesale outlets for the distribution of its products, at separated points throughout the country, transporting the goods in large part by its own barges and equipment; (4) It manufactured and distributed a widely diversified line of steel, and pig iron, being the fourth largest producer of steel in the United States; (5) It employed approximately 533,000 persons in all of its enterprises.

The Court decided that the National Labor Relations Act was applicable to the respondents therein even though the employees were engaged in intrastate manufacturing, because, as stated in the opinion, page 37:

"Although activities may be intra-state in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control. *A. L. A. Schechter Poultry Corp. v. United States*, *supra*. Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. *Id.* The question is necessarily one of degree. * * *." Again at page 41: "Giving full weight to respondent's con-

tention with respect to a break in the complete continuity of the 'stream of commerce' by reason of respondent's manufacturing operations, the fact remains that the stoppage of those operations by industrial strife would have a most serious effect upon interstate commerce. In view of respondent's farflung activities, it is idle to say that the effect would be indirect or remote. It is obvious that it would be immediate and might be catastrophic. We are asked to shut our eyes to the plainest facts of our national life and to deal with the question of direct and indirect effects in an intellectual vacuum. Because there may be but indirect and remote effects upon interstate commerce in connection with a host of local enterprises throughout the country, it does not follow that other industrial activities do not have such a close and intimate relation to interstate commerce as to make the presence of industrial strife a matter of the most urgent national concern. When industries organize themselves on a national scale, making their relation to interstate commerce the dominant factor in their activities, how can it be maintained that their industrial labor relations constitute a forbidden field into which Congress may not enter when it is necessary to protect interstate commerce from the paralyzing consequences of industrial war?

Can one, by any stretch of imagination, say that a strike of respondent's fifty-eight employees in the case at bar, would have the same effect as set forth by this Court in the *Jones and Laughlin Company* case, *supra*? The obvious answer is, that it would not.

National Labor Relations Board v. Freuhauf Trailer Company, supra.

Briefly the facts in that case were as follows:

(1) The respondent was a corporation organized under the laws of Michigan and engaged in the manufacture, assembly, sale and distribution of commercial trailers and of trailer parts and accessories; (2) Respondent's plant, located in Detroit, was the largest concern of its kind in the United States; (3) Respondent maintained thirty-one branch sales offices in twelve different states and had distributors and dealers in the principal cities of the country; (4) A wholly owned subsidiary operated in Toronto, Canada, where sales were made and considerable assembly work was done with materials obtained from the Detroit plant; (5) Respondent imported more than fifty per cent of raw materials that went to make up the finished product; (6) More than eighty per cent of its sales were shipped out of the state and its sales amounted to approximately \$3,300,000 per annum. Its nearest competitor sold only thirty per cent of that amount.

This Court, after setting forth the above facts, briefly gave its opinion as follows, page 57:

"The questions relating to the construction and validity of the Act have been fully discussed in our opinion in No. 419, the *National Labor Relations Board v. Jones and Laughlin Steel Corp.* decided this day. We hold that the principles there stated are applicable here."

National Labor Relations Board v. Friedman-Harry Marks Clothing Company, Inc.
supra.

Briefly the facts in that case were as follows:

(1) Respondent was a Virginia corporation with

its plant at Richmond, where it engaged in the purchase of raw materials and the manufacture, sale and distribution of men's clothing; (2) 99.57 per cent of their raw materials came from states other than Virginia; (3) 82.8 per cent of its finished product was purchased by customers outside the state; (4) Respondent maintained a sales office and show room in New York City through which fifteen or twenty per cent of its total sales was made; (5) Respondent's sales amounted to approximately \$2,000,000 for the year 1935.

Here again, this Court, after reciting the above facts, gave its reasons for its opinion in this language, page 75:

"For the reasons stated in our opinion in No. 419, *National Labor Relations Board v. Jones and Laughlin Steel Corporation*, decided this day, we hold that the objection raised by respondent to the construction and validity of the National Labor Relations Act are without merit."

National Labor Relations Board v. Santa Cruz Fruit Packing Company, supra.

Briefly, the facts in this case were as follows:

(1) The respondent was engaged in the manufacture of packing fruits and vegetables in the State of California and also sold and distributed its finished products throughout the United States. All of its raw materials were obtained in the State of California; (2) Respondent maintained two factories in two different cities in the State of California, one of which was devoted solely to packing and the other devoted to packing, shipping and distributing; (3) Thirty-nine per cent of its finished product was di-

rectly shipped in interstate commerce and sixty-one per cent in intra-state commerce; (4) Respondent was one of the largest fruit packing concerns in the United States.

The above case was decided by the Circuit Court of Appeals for the Ninth Circuit, *supra*, and it was therein held that the National Labor Relations Act was applicable to the respondent, based upon the reasonings in the *Jones and Laughlin* case, *supra*. It was pointed out by the Court; that the thirty-nine per cent of its products which were shipped by it in interstate commerce, was a sufficiently substantial amount to warrant the application of the doctrines set forth in the *Jones and Laughlin Steel Corporation* cases, *supra*.

It can readily be seen upon an examination of the facts in the above cases as compared with the facts in the case at bar, that they are wholly different and the law applicable to the cases aforesaid cannot be applied to the respondent in this case. The respondent's contention has received support and is best illustrated in a recent decision in *National Labor Relations Board v. Fashion Piece Dye Works, Inc.*, decided November 28, 1938, C. C. A. (3d), No. 6559 in which a differently constituted Court in the Third Circuit distinguished the case at bar and upheld the jurisdiction of the Board:

*National Labor Relations Board v. Fashion
Piece Dye Works, Inc., supra.*

Briefly, the facts in that case were as follows:

(1) The respondent was a corporation organized under the laws of New Jersey operating a plant in Pennsylvania for the finishing and dyeing of rayon

and acetate goods belonging to its customers; (2) Fifty to ninety per cent of the goods processed by the respondent was received from points outside of Pennsylvania and transported to the Easton, Pennsylvania, plant in *trucks owned and operated by the respondent*; (3) Ninety per cent of the finished goods are delivered directly to the respondent's customers in New York City *by the respondent's own trucks*.

The respondent in the *Fashion Piece Dye Works* case relied upon the decision of the Circuit Court of Appeals for the Third Circuit in the case at bar, in resisting the order of the National Labor Relations Board. But that Court distinguished the two cases in the following language:

"The respondent relies upon *National Labor Relations Board v. Fainblatt*, 98 F. (2d) 615, in which this Court, one judge dissenting, held that a New Jersey tailoring concern which was engaged exclusively in finishing garments for a New York concern from cloth owned and furnished by the latter was not subject to the provisions of the Act. *That case, however, is clearly distinguishable, and is not controlling here because it appears that Fainblatt engaged in no interstate transportation whatever*, whereas in the case before us the respondent itself transported at least fifty per cent of the textiles to be processed into the State and the same percentage of the finished product out of the State."

National Labor Relations Board v. Hopwood R. Co., supra.

The facts in that case were as follows:

(1) The respondent was engaged in repairing milk and ice cream containers; (2) Twenty-three per cent

of the containers on which work was done was transported in the respondent's trucks from and to states other than the state where the work was performed.

The Court properly held that the respondent was engaged in interstate commerce within the purview of Sec. 2, para. (6) of the National Labor Relations Act, because the transportation in its own trucks of the goods it processed was an essential part of the business.

The respondent in the case at bar did not purchase any raw materials either within or without the state; he did not sell any of his finished products either within or without the state; he took no part in transporting the goods either within or without the state; he was engaged solely in the performance of certain labor upon an unfinished garment.

According to the constitutional standards set by all of the above described cases, decided under the National Labor Relations Act, the statutory power of the National Labor Relations Board to prevent labor practices which "affect commerce" extends to regulation of activities which "have such a close and substantial relation to interstate commerce, that their control is essential or appropriate to protect that commerce from burdens or obstructions." *Jones and Laughlin Steel Corporation, supra.* In this category, this Court has placed employers in nationally important industries whose plant operations were wholly within a state, but who nevertheless shipped, predominantly in interstate commerce, products fabricated from raw materials which were, to a large extent, imported from other states. For example, the National Labor Relations Board has assumed jurisdiction of companies which obtained a negligible quantity of

raw materials or equipment from other states, but which ship out much of their finished product. *Idaho-Maryland Mines Corp.*, C-260, 4 N. L. R. B. No. 97 (Jan. 10, 1938); *Clover Fork Coal Co.*, C-243, 4 N. L. R. B. No. 3 (Nov. 27, 1937); *Greensboro Lumber Co.*, 1 N. L. R. B. 629 (1936); *Campbell Machine Co.*, R-249, 3 N. L. R. B. No. 79 (Oct. 4, 1937); *National Labor Relations Board v. Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th, 1937). It has assumed jurisdiction over large wholesale agencies, which distribute wholly within a state, products imported by those agencies from other states. *Suburban Lumber Co.*, C-162, 3 N. L. R. B. No. 17 (Aug. 2, 1937); *Danahy Packing Co.*, R-224, 3 N. L. R. B. No. 30 (Sept. 17, 1937); but to date this Court has not assumed jurisdiction over an employer whose business is purely local, as in the case at bar.

This Court has assumed jurisdiction of Electric Power Corporations which neither import nor export any significant amount of raw materials, equipment, or power. *Consolidated Edison Company of New York, Inc.*, Nos. 19, 25, Decided Dec. 5, 1938. The petitioner places great stress upon this case, because that company neither imported nor exported large quantities of raw materials, etc., however, this Court was justified in holding that a strike in Consolidated Edison Company's plant would burden and affect commerce within the purview of Sec. 2, par. (7) of the Act. As therein pointed out, the strike in the Consolidated Edison Company's Plants, would result in serious derangement not only of interstate facilities, such as telephones, telegraphs and railroads, but also of businesses making interstate shipments. The potential effect of such a strike was depicted as equivalent to

simultaneous strikes by the employees of all industries dependent for their continued operation upon power furnished by the utilities before the Board.

The petitioner has completely failed either at the original hearing before the Board or in any of its subsequent proceedings, to show that a strike in the respondent's plant of fifty-eight employees, would substantially affect and burden the flow of commerce between the states. In fact, a reading of the testimony will reveal that the representative of the Le Sportswear Company testified, that during the period of the strike at respondent's plant in Somerville, their business was in no wise affected (II. R. 181-182). They simply shipped their goods to other plants in the same line of business. Can we say that this Court in its decision in the *Jones and Laughlin Steel Company* case, *supra*, intended to hold that the National Labor Relations Act was applicable to a type of business carried on by these respondents? If so, what need was there for the Court saying as it did on page 37:

"Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote, that to embrace them in view of our complex society would effectively obliterate the distinction between what is national and what is local, and create a completely centralized government."

This Court must have had in mind, a business such as operated by the respondents herein, which is purely local in character and which, even though shut down by strike or otherwise for a lengthy period of time.

would in no wise affect the flow of women's sportswear through the states. To hold otherwise would of necessity "obliterate the distinction between what is national and what is local and create a completely centralized government."

From a speculative viewpoint almost every business participant, to a limited extent, at least, in the general current of commerce. This participation is magnified in those industries which import and export materials before and after their manufacturing or other operations. To hold that the respondent in the instant case may be classified with the decisions involved in the cases cited and relied upon by the petitioner herein, would, in effect, remove all speculation. This court never intended to permit national control over every business. Manufacturing in itself is not commerce.

Kiddy v. Pearson, 128 U. S. 1, 20, 21, 31 L. ed. 346, 350, 351, 9 S. Ct. 6, 2 Inters. Com. Rep. 232;

United Mine Workers v. Coronado Coal Co., 259 U. S. 344, 407, 408, 66 A. L. R. 762;

Oliver Iron Min. Co. v. Lord, 262 U. S. 172, 178, 67 L. ed. 929, 935, 43 S. Ct. 526;

United Leather Workers International Union v. Herkert and M. Trunk Co., 265 U. S. 457, 465, 68 L. ed. 1104;

Industrial Asso. v. United States, 268 U. S. 64, 82, 69 L. ed. 849, 855, 45 S. Ct. 403;

Coronado Coal Co. v. United Mine Workers, 268 U. S. 295, 310, 69 L. ed. 963, 970, 45 S. Ct. 551;

A. L. A. Schechter Poultry Corp. v. United States, 295 U. S., page 547, 79 L. ed. 1580, 55 S. Ct. 97 A. L. R. 947;

Carter v. Carter Coal Co., 298 U. S. 238,
304, 317, 327, 80 L. ed. 1160, 1185, 1192
56 S. Ct. 855.

CONCLUSION.

Respondent respectfully submits that the lower Court was justified in holding that the respondent cannot be drawn into the network of national control under the constitutional power to "regulate commerce between the states," but that the respondent was engaged solely in an intra-state business which is not subject to regulation by Congress.

LEON GEROFKY,
Counsel for the Respondent.

T. GIRARD WHEARTON,
Associate Counsel.

JOSEPH HALPERN,
Associate Counsel.

December, 1938.

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No. 514

Office - Supreme Court, U. S.

FILED

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CLERK

IN THE

Supreme Court of the United States

October Term, 1938

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

BENJAMIN FAINBLATT and MARJORIE FAIN-
BLATT, individuals, doing business under the firm name
and styles of Somerville Manufacturing Company and
Somerset Manufacturing Company,

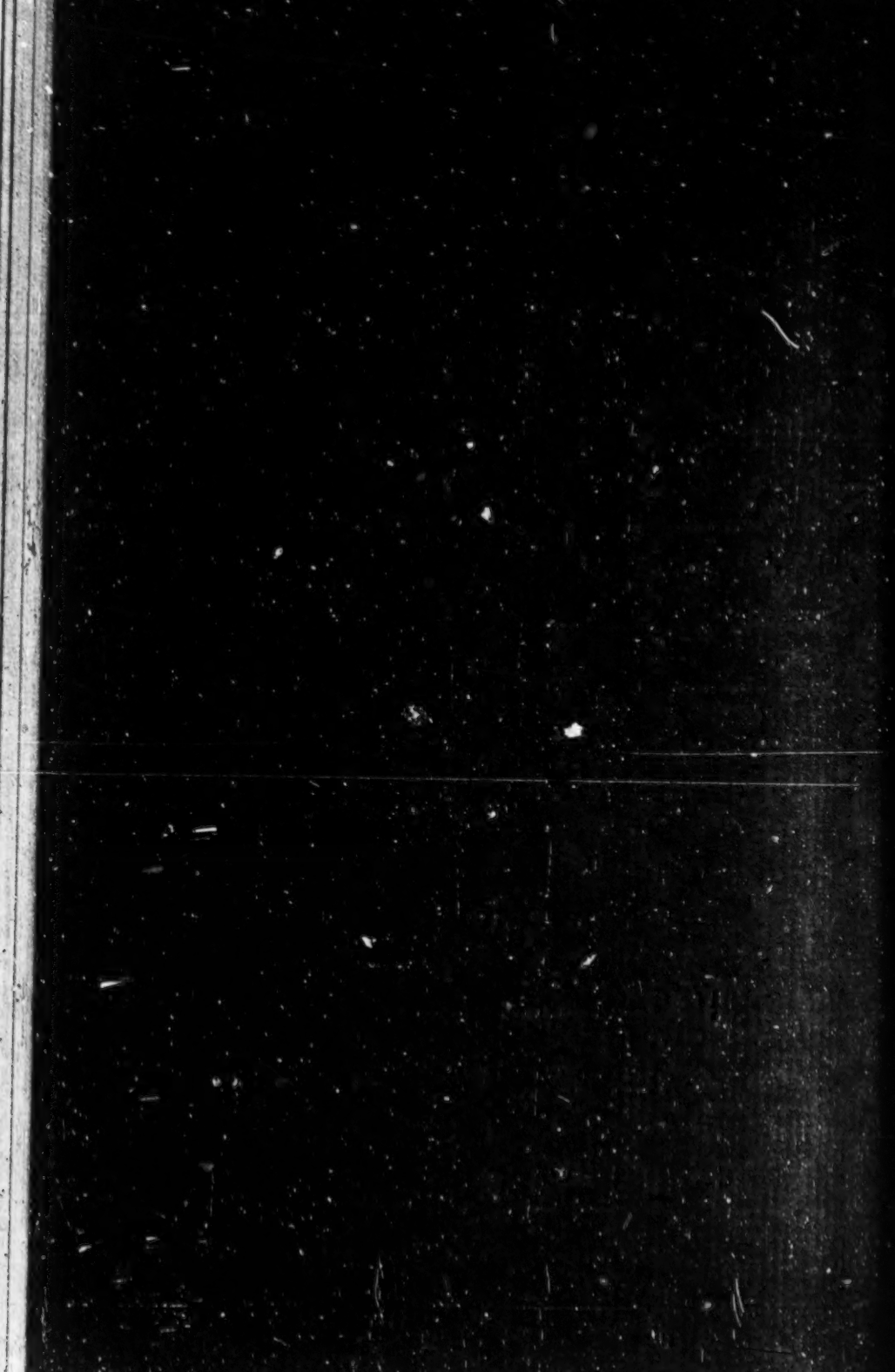
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENTS

LEON GEROFKY,
Solicitor for Respondents,
Somerville, New Jersey.

T. GIRARD WHARTON,
JOSEPH HALPERN,
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1938

No. 514

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

BENJAMIN FAINBLATT and MARJORIE FAINBLATT, individuals,
doing business under the firm name and styles of Somer-
ville Manufacturing Company and Somerset Manufac-
turing Company,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENTS

FACTS

Since the brief for the National Labor Relations Board contains a full and substantially correct recital of the facts and the proceedings below and since the only question to be considered in this brief is the National Labor Relations Board's jurisdiction over the respondent, it is not deemed

necessary to re-state such here, but the facts relating to that question will be referred to and discussed in the argument.¹

SUMMARY OF ARGUMENT

The Court below properly held that the National Labor Relations Act could not validly be applied to respondent's business for the following reasons:

1. Respondent's business is one admittedly intrastate in character, with no interstate ramifications whatsoever, bearing no close and intimate relation to interstate commerce and having no direct and substantial effect upon such commerce within the meaning of the National Labor Relations Act.

2. Even if the respondent is subject to the jurisdiction of the Board, that jurisdiction should not be exercised in this case because

- a. The respondent's business is wholly intrastate in character and, therefore, subject to the plenary power of the State of New Jersey.

- b. The Board has failed to allege and clearly prove that the alleged unfair labor practices of the respondent do actually threaten interstate or foreign commerce in a substantial manner.

¹There is testimony in the record that at the time of the alleged unfair labor practices and the making of the complaint herein the business in question was owned by Benjamin Fainblatt. There is also testimony in the record that it was owned by Marjorie Fainblatt until January 1, 1937, since which time it has been owned and operated by Benjamin Fainblatt. However, since the Board has found that Benjamin Fainblatt was and is the real owner of the business and that Marjorie Fainblatt was merely a nominal registered owner. (II. R. 233), the term 'respondent', as used in this brief, will refer to Benjamin Fainblatt.

ARGUMENT

I

Respondent's business is one admittedly intrastate in character, with no interstate ramifications whatsoever, bearing no close and intimate relation to interstate commerce and having no direct and substantial effect upon such commerce within the meaning of the National Labor Relations Act.

At the outset, we deem it important to call attention to the fact that in none of the cases heretofore decided by this or any other Court have the facts been identical with those in the case at bar. The record reveals, and the Board admits, that the respondent is a manufacturer of women's sportswear with his place of business located in a small building in Somerville, New Jersey. The business consists solely of manufacturing unfinished dress goods into women's sportswear. Both the unfinished goods and the finished garments are the property of a partnership in New York City known as the Lee Sportswear Company, which is engaged in marketing women's sportswear; and the respondent at no time has title to, or other property interest in, the unfinished goods or the finished garments. While the respondent and the partners in Lee Sportswear Company are members of the same family, the evidence is uncontradicted, it is admitted by the Board, and it was found by the Court below, that their respective enterprises are financially and otherwise independent of each other, viz: there is absolutely no business connection, either directly or indirectly, between the respondent and Lee Sportswear Company, other than the usual relationship of manufacturer and customer (I. R. 475, 515, 516). The raw materials are purchased and delivered, or caused to be delivered, by Lee Sportswear Company to its represen-

tative at Somerville, New Jersey, who, in turn, delivers them to the respondent at his manufacturing plant. The finished products are delivered by the respondent to the representative of Lee Sportswear Company at the plant in Somerville and by the latter are taken, or caused to be taken, therefrom (I. R. 84-90; II. R. 145, 180, 181, 182, 183). The respondent neither transports nor causes to be transported the unfinished goods or the finished products to or from his plant at any time, nor has he the facilities for so doing (I. R. 50-52, 84-90; II. R. 145, 180-183). He acts as agent for no one nor is his business connected directly, or indirectly, in a financial, or any other manner, with the business of any other person or corporation (I. R. 85, 86, 88, 90, 112). The respondent purchases no raw materials, sells no finished products, does not engage in shipping or transportation of any character, either intrastate or interstate, and is engaged solely in a manufacturing business which is purely local in character (I. R. 50, 51, 88-90; II. R. 180-183). At the time of the complaint in this case (which is the basis for the alleged jurisdiction of the Board) he employed approximately 60 persons (I. R. 52; II. R. 150, 151). While the respondent's production was slightly decreased, at or about the time of the complaint herein, as the result of a seasonal slack and a strike of some of his employees (II. R. 77-79), the record reveals, and it is not disputed by the Board, that the business of Lee Sportswear Company, (respondent's only customer), was in nowise affected thereby, because it was able to acquire the same manufacturing services from other sources (II. R. 181, 182, 186). The record also establishes as undisputed facts not only that Lee Sportswear Company was not affected by the slight decrease in the respondent's production but that it would not be affected if the respondent's production ceased altogether, because it was in nowise

dependent upon the respondent's business, having other sources of supply (II. R. 181, 182, 186). While the record reveals that most of the unfinished goods which were delivered to the respondent for manufacture were shipped, or caused to be shipped, by Lee Sportswear Company from other States, they were always delivered, in the first instance, to the representative of Lee Sportswear Company at the respondent's plant and were thereafter delivered by him to the respondent for manufacture. At the time the unfinished goods were acquired by the respondent, they had come to rest in the State of New Jersey. Similarly, the finished garments were delivered by the respondent to the representative of Lee Sportswear Company at the plant in Somerville and were by the latter shipped or delivered to its customers (I. R. 50-52, 86, 88, 89; II. R. 182, 183). The source of the unfinished goods and the destination of the finished garments of his customer were of no concern to the respondent. Insofar as the record reveals, his activities were purely local in their scope and intent and the activities of his sole customer, whether in intrastate or interstate commerce, were of no concern to him. Most, if not all, of the foregoing facts have been admitted by the Board, not only in its stipulation with the respondent at its hearing below (I. R. 88, 89), but also in the briefs of both the Board and the International Ladies' Garment Workers' Union.

The rules and guiding principles to be applied to cases such as that at bar have been evolved and reiterated by this Court in a series of recent decisions.

A. L. A. Schechter Poultry Co. v. United States, 295 U. S. 495

Carter v. Carter Coal Co., 298 U. S. 238

National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1

National Labor Relations Board v. Freuhauf Trailer Co., 301 U. S. 49

National Labor Relations Board v. Freidman-Harry Marks Clothing Co., 301 U. S. 58

Santa Cruz Fruit Packing Co. v. National Labor Relations Board, 303 U. S. 453

Consolidated Edison Co. v. National Labor Relations Board, 83 L. Ed. 131, 59 Sup. Ct. Rep. 206

They would appear to be well settled and the only difficulty arises in their application to a particular case. This Court has said repeatedly that in enacting the Act in question, Congress did not attempt to deal with particular instances and that whether particular action in the conduct of an intrastate enterprise affects interstate or foreign commerce in such manner as to be subject to Federal control is to be determined as individual cases arise.

National Labor Relations Board v. Jones & Laughlin Steel Corp., *supra*

Santa Cruz Fruit Packing Co. v. National Labor Relations Board, *supra*

Consolidated Edison Co. v. National Labor Relations Board, *supra*

In conferring authority upon the Board, Congress had regard to the limitations of the Constitutional grant of Federal power.

National Labor Relations Board v. Jones & Laughlin Steel Corp., *supra*

Consolidated Edison Co. v. National Labor Relations Board, *supra*

The "commerce" contemplated by the Act (aside from that within a Territory or the District of Columbia) is in-

terstate and foreign commerce and the unfair labor practices which the Act purports to reach are those affecting that commerce.

Consolidated Edison Co. v. National Labor Relations Board, supra

It is conceded that it is the "effect" upon interstate or foreign commerce, not the source of the injury, which is the criterion.

National Labor Relations Board v. Jones & Laughlin Steel Corp., supra

Consolidated Edison Co. v. National Labor Relations Board, supra

The difficulty arises in determining the manner in which and the extent to which the particular intrastate enterprise must affect interstate or foreign commerce within the meaning of the Act. This Court has variously expressed that relationship. It has said that the enterprise must have a "close and substantial relation" to interstate or foreign commerce; that such commerce must be affected in a "close and intimate fashion"; that the effect upon such commerce must be "direct" and not "indirect"; that the effect must have "immediacy or directness" and not a "remote effect"; and that such commerce must not be "unduly burdened".

A. L. A. Schechter Poultry Co. v. U. S., supra

Carter v. Carter Coal Company, supra

National Labor Relations Board v. Jones & Laughlin Steel Corp., supra

Santa Cruz Packing Co. v. National Labor Relations Board, supra

Consolidated Edison Co. v. National Labor Relations Board, supra

In the concurring opinion of the late Mr. Justice Cardozo, in the case of *A. L. A. Schechter Poultry Co. v. U. S.*, *supra*, he very strongly intimates that the effect upon such commerce must be *substantial*. He said, at page 554:

“There is a view of causation that would obliterate the distinction between what is national and what is local in the activities of commerce. Motion at the outer rim is communicated perceptibly, though minutely, to recording instruments at the center. A society such as ours ‘is an elastic medium which transmits all tremors through its territory; the only question is of their size.’ Per Learned Hand, J., in the court below. The law is not indifferent to considerations of degree. Activities local in their immediacy do not become interstate and national because of distant repercussions. . . . There is no penumbra of uncertainty obscuring judgment here. To find immediacy or directness here is to find it almost everywhere. If centripetal forces are to be isolated to the exclusion of the forces that oppose and counteract them, there will be an end to our federal system.”

This interpretation not only appears to be accepted by the Board and the International Ladies' Garment Workers' Union in their briefs (Board's brief, pages 14 and 17; Union's brief, page 11), but also has the support of at least one United States Circuit Court of Appeals and others who have carefully studied and analyzed the earlier opinions of this Court.

National Labor Relations Board v. Idaho-Maryland Mining Corp., 98 Fed. (2d) 129

6 GEORGE WASHINGTON LAW REV. 436, at 451

In the *Idaho-Maryland Mining Corp.* case, *supra*, it was said, at page 131:

"If however, such acts may be said to constitute commerce, it is a commerce to which respondent's activities are not closely, intimately or substantially related, and which respondent's labor practices do not directly or *substantially affect*." (Italics ours)

Another analyst concludes that the effect must be "appreciable". 47 YALE LAW JOURNAL 1221, at 1224.

The difficulty in finding proper formulas to guide in the application of the principles aforesaid was recognized by this Court in the *Santa Cruz* case, *supra*, where the Court said, at page 466:

"To express this essential distinction, 'direct' has been contrasted with 'indirect' and what is 'remote' or 'distant' with what is 'close and substantial'. Whatever terminology is used, the criterion is necessarily one of degree and must be so defined. This does not satisfy those who seek for mathematical or rigid formulas. But such formulas are not provided by the great concepts of the Constitution such as 'interstate commerce', * * * * * In maintaining the balance of the constitutional grants and limitations, it is inevitable that we should define their applications in the gradual process of inclusion and exclusion.

"There is thus no point in the instant case in a demand for the drawing of a mathematical line. And what is reasonably clear in a particular application is not to be overborne by the simple and familiar dialectic of suggesting doubtful and extreme cases.

* * * The question that must be faced under the Act upon particular facts is whether the unfair labor practices involved have such a close and substantial relation to the freedom of interstate commerce from injurious restraint that these practices may constitutionally be made the subject of federal cognizance through provisions looking to the peaceable adjustment of labor disputes."

As stated above, "Whatever terminology is used, the criterion is necessarily one of degree and must be so defined".

What is the practical test? How are we to determine what is "direct" as contrasted with "indirect" and what is "remote" or "distant" with what is "close and substantial" or "close and intimate"? Do these terms refer to the proximity of the business in question to interstate or foreign commerce? That is to say, is an intrastate business, which to some extent directly engages in interstate transactions, or in which transactions in interstate commerce immediately precede or follow its intrastate business activity, to be considered "direct" in its effect upon such commerce, whereas such a business which is not engaged directly in interstate transactions or is several degrees removed from transactions in interstate commerce, to be considered "indirect" in its effect upon such commerce? Or is the test the extent to which the labor practices in such intrastate business actually, or might, obstruct or affect interstate commerce, regardless of the proximity of the business to interstate or foreign commerce? In other words, will a purely intrastate business, having neither interstate ramifications as part of its business nor close proximity to activities in interstate commerce but whose labor practices have affected, or would affect, in a

very serious and substantial manner the interstate activities of those who are directly dependent upon it, be considered as having a "direct" effect upon such interstate commerce, whereas, similar enterprises, so limited in their activity that their labor practices could in nowise affect in a serious and substantial manner the interstate commerce of those with whom they do business, will be considered as having an "indirect" effect upon such commerce? We submit that neither test alone can be considered as decisive and controlling but that the determination in any particular case must be reached by a consideration of both.

As we have seen, the entire problem involves a question of degree. How far has this Court gone in the past in extending the jurisdiction of the Board to the field of industry? What were the determining factors in applying the Act in each case? How far should this Court go in applying the Act? It is respectfully submitted that the rules and principles heretofore laid down by this Court and referred to above are of little practical assistance in determining their applicability to a particular factual situation. The scope of the Board's jurisdiction must be determined from the rational and practical application of such rules and principles in a given factual situation, keeping in mind always the definite determination of this Court not to obliterate the distinction between what is national and what is local in character. This Court has said that the Act should be applied, of course, to enterprises which are fundamentally interstate in character, regardless of the extent of their effect upon interstate commerce (*Associated Press v. National Labor Relations Board*, 301 U. S. 103; *National Labor Relations Board v. Pennsylvania Greyhound Lines*, 303 U. S. 261); that it should be applied to enterprises which are intrastate in their principal activity but which have definite and direct interstate attributes

and ramifications, particularly where, because of the size and extent of the enterprise, the effect upon interstate commerce of labor difficulties therein would be substantial, serious, and even catastrophic (*National Labor Relations Board v. Jones & Laughlin Steel Corp.*, *supra*; *National Labor Relations Board v. Friedman-Harry Marks Clothing Co.*, *supra*; *National Labor Relations Board v. Fruehauf Trailer Co.*, *supra*; *Santa Cruz Fruit Packing Co. v. National Labor Relations Board*, *supra*); and that it should be applied to those enterprises, purely intrastate in character and with no direct connection with interstate commerce but which are of such tremendous proportions that the effect of labor disturbances therein upon interstate-commerce could be nothing but serious and catastrophic. (*Consolidated Edison Co. v. National Labor Relations Board*, *supra*).

In all of these factual situations, there may well be sound reasoning and desirable public policy for applying the Act. On the other hand, this Court has definitely said that where the enterprise is purely local in character, with no direct connection with interstate commerce, and where it did not appear that the actual effect upon interstate commerce was either direct or substantial, the effect upon interstate commerce was too indirect and remote to bring such enterprise within the commerce clause. *A. L. A. Schechter Poultry Co. v. U. S.*, *supra*. It has gone even further and held that in a business which is primarily local in character but which has certain interstate ramifications involving the transportation of its products in interstate commerce, the effect upon interstate commerce is too indirect and remote to sustain Federal jurisdiction. *Carter v. Carter Coal Co.*, *supra*. It is not for us to say that it seems difficult, if not impossible, to reconcile this last mentioned factual situation with some of those in which this Court has held that there was a

basis for Federal jurisdiction. This Court has expressly said that there is no conflict between the *Carter* case and those in which this Act was held to apply; hence, we must assume that it is still good law. *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, *supra*; *Santa Cruz Fruit Packing Co. v. National Labor Relations Board*, *supra*.

What conclusions are we justified in drawing from these cases? What are the elements upon which Federal jurisdiction is founded? Manufacturing, or, in a larger sense, production, has always been considered by this Court as inherently indirect in its effect upon interstate commerce, no matter how extensive.

Kidd v. Pearson, 128 U. S. 1

United States v. E. C. Knight Co., 156 U. S. 1

A. L. A. Schechter Poultry Co. v. U. S., *supra*

Carter v. Carter Coal Co., *supra*

National Labor Relations Board v. Jones & Laughlin Steel Corp., *supra*

In the *Schechter* case, this Court seemed to feel that where one was engaged solely in a purely intrastate enterprise, notwithstanding the raw materials for such enterprise were transported in interstate commerce almost immediately preceding their use in that enterprise, the relationship to interstate commerce was too "indirect" and "remote". True, this conclusion was based somewhat upon the fact that before the raw materials were used in the enterprise they actually came to rest within the State and thus were out of interstate commerce. In the *Carter* case, however, this Court held that even though the local enterprise was directly engaged in shipping its products

in interstate commerce, the effect of its purely local business had too indirect and remote an effect upon such commerce. In the *Jones & Laughlin*, *Friedman-Harry Marks*, *Fruehauf* and *Santa Cruz* cases, this Court seemed to think that the large interstate ramifications which formed a direct part of the business in each case were sufficient justification for concluding that the effect upon commerce was direct and immediate. In each of these last mentioned cases, the business in question was one of the largest enterprises in the particular industry in this country and this Court took pains to expressly point out the serious and substantial interference with interstate commerce which would, or did, result from the consequences of unfair labor practices in each business. In the *Jones & Laughlin* case, this Court said, at page 41:

"In view of the respondent's far flung activities, it is idle to say that the effect would be indirect or remote. It is obvious that it would be immediate and might be catastrophic. * * * When industries organize themselves on a National scale, making their relation to interstate commerce the dominant factor in their activities, how can it be maintained that their industrial labor relations constitute a forbidden field into which Congress may not enter when it is necessary to protect interstate commerce from the paralyzing consequences of industrial war?"

In the last case on this subject decided by this Court, it, for the first and only time (so far as jurisdiction under this Act is concerned), considered an enterprise which was purely local and intrastate in its activities and which in nowise engaged in interstate commerce, either directly or

indirectly (if we ignore the purchase of raw materials through interstate commerce, which apparently this Court did in reaching its conclusion). *Consolidated Edison Co. v. National Labor Relations Board*, *supra*. Yet, in that case, this Court seemed to feel that, because of the tremendous size of the intrastate business, the consequences of unfair labor practices therein would necessarily be "catastrophic" to many of its customers engaged directly in interstate commerce, and, therefore, that the effect of such labor practices upon such commerce must be direct and immediate.

While we cannot say that mere size in itself is determinative of directness or indirectness in the effect upon interstate commerce, any practical and sensible application of the principles governing these cases to enterprises wholly intrastate in character dictates that their size and the extent of the actual, or probable, obstruction to and interference with interstate commerce resulting from labor disturbances therein, should be considered as important in determining whether they affect such commerce within the meaning of the Act. Where an enterprise is wholly interstate in its activities, the consequences of labor practices therein must, of necessity, be direct in their effect upon interstate commerce, regardless of size. We may even say the same with respect to those enterprises, local and intrastate as to their production activities, but which directly engage or participate in interstate activities. But there certainly can be no justification for extending the rule to all enterprises, such as that in the case at bar, which are purely local and intrastate in character with no interstate ramifications, where the effect of such labor practices upon interstate commerce is, or may be, only inconsequential or infinitesimal.

In no case yet presented to this Court has there been a factual situation such as that in the case at bar. The *Consolidated Edison* case, *supra*, is the only one heretofore decided by this Court involving the application of the Act to a wholly intrastate enterprise. This case clearly differs from the case at bar, both in respect to the size of the enterprise involved and the extent of the consequences upon interstate commerce. By no stretch of the imagination is it possible to conceive that any unfair labor practices in the respondent's business could have seriously harmful and catastrophic consequences upon interstate commerce.

It is obvious that the degree of closeness and intimacy to interstate commerce also is an important element to be considered. In every case decided by this Court it appeared either that the business in question was engaged directly and primarily in interstate commerce, or that it engaged directly in some phase of interstate commerce as an adjunct of its primary purpose of production, or that interference with or the cessation of its intrastate activities would seriously and substantially affect interstate commerce.

Where is the line to be drawn in enterprises solely intrastate in character with no interstate ramifications? We respectfully submit that in determining the effect upon interstate commerce of unfair labor practices, within the meaning of the Act, this Court should consider not only the degree of proximity of the main business activities to interstate commerce, to determine whether they are sufficiently "close and intimate" to such commerce, but should consider also the extent of the actual, or probable, effect upon such commerce resulting from such unfair labor practices. Unless such is done, we are forced to the obviously erroneous conclusion that the Act is intended to apply, and will be applied, to all enterprises which are purely local and intrastate in character and which, in any degree, affect

interstate commerce, no matter how imperceptibly or remotely. It seems to us, and it is respectfully submitted, that unless it is clearly shown by the Board that the consequences of unfair labor practices in a wholly intrastate venture are, or will be, seriously harmful, if not catastrophic, to interstate commerce, the whole matter should be left to the plenary power of the State, and a basis for Federal jurisdiction should not be found. Frankly, we realize that the line of demarcation is not one easy to define, in fact, it may be impossible of definition. But we strongly urge that jurisdiction should not be extended to those cases, such as that at bar, involving enterprises which are obviously, clearly and solely intrastate in character, simply because such ventures happen indirectly to affect interstate commerce to some slight degree. Not only that, but we also urge that unless there is proof by the Board that unfair labor practices in a given intrastate business have actually resulted, or could reasonably be expected to result, in serious and substantial consequences to interstate commerce, Federal jurisdiction should not be found. While we do not insist that the consequences necessarily be "catastrophic", we do think they should be at last *serious and substantial*.

None of these elements appear in the case at bar. In fact, the proofs are all to the contrary. There was a slight diminution in the flow of production from the small business of the respondent. Actually, however, the business of his sole customer not only was not in anywise affected but would not have been affected if the respondent's production had ceased altogether (II. R. 181, 182, 186). Respondent's business was too small and insignificant a unit in his industry to have had materially or substantially harmful consequences of any kind, either to the industry as a whole or to interstate commerce.

To argue in the abstract that the mere diminution in the flow of the respondent's products through the channels of interstate commerce amounts to an obstruction of or interference with that commerce seems to us to be arguing in an "intellectual vacuum". The diminution in the business of any purely local, intrastate enterprise, of necessity, must actually affect, in some degree, the flow in interstate commerce. The purpose of the Act is not to protect an abstract entity called "interstate commerce", but is for the protection of those who, through that commerce, deal with that which is produced. If, in fact, no harm has come, or is likely to come, in the case at bar, what possible reason can there be for applying the Act? We respectfully submit that there is, and can be, none.

Both the Board and the Union cite numerous decisions of the Board and various Circuit Courts of Appeals in support of their contention that the alleged unfair labor practices in the respondent's intrastate business affect interstate commerce within the meaning of the Act. Without prolonging this brief by a recital of the facts in each of the cases thus cited, it is enough to say that a very careful analysis of each reveals that in none were the facts the same, or even similar, to the case at bar and that in all of them where it was found that the Board had jurisdiction the enterprise in question either was engaged in interstate commerce directly or had some interstate ramifications to its main business. For these reasons, therefore, it is deemed that none of these cases are controlling and that they should be disregarded by this Court in its disposition of the case at bar.

It is suggested in the Union's brief that the case at bar is to be distinguished from the *Schechter* case, *supra*, because in that case the poultry came to a permanent rest in the State before it came into the hands of the local busi-

ness and also because it was designed for distribution within the State thereafter, whereas in our case the unfinished goods are shipped in interstate commerce to the respondent's plant with the intent that they shall remain there but temporarily and shall thereafter be shipped again, in finished form, in interstate commerce. The suggestion that the raw materials manufactured into finished products are but temporarily in the State and have not come to rest before delivery to the respondent is far from accurate. Actually, the respondent had no part in the transportation of the raw materials to his place of business (I. R. 50, 88-90; II. R. 180, 181). They were always received by a representative of his customer within the State of New Jersey and came to rest there before delivery by the customer to the respondent for manufacturing. Delivery of the finished product was made thereafter by the respondent to his customer within the State of New Jersey at his place of business, and it was only after such delivery had been completed within the State of New Jersey that shipments were made by the customer to its trade (I. R. 50, 88; II. R. 180-181). In the case at bar, the unfinished goods had terminated their journey in interstate commerce before they were delivered to the respondent by his customer for manufacture. During the manufacturing process, they lost their identity completely and it was as an entirely different product that they were sometime thereafter delivered to the respondent's customer in the form of finished garments. This is not a case of continuity of transit in interstate commerce between seller and buyer in which the respondent directly participates, where the transitory stop is a convenient step in the process of getting the product to its final destination. In this connection, the language of this

Court in the *Carter* case is pertinent. This Court said, at page 301:

"That commodities produced or manufactured within a state are *intended to be sold or transported outside the state* does not render their production or manufacture subject to federal regulation under the commerce clause." (Italics ours)

In the same connection, the Second Circuit Court of Appeals, in the case of *National Labor Relations Board v. National New York Packing & Shipping Co.*, 86 Fed. (2d) 98, said, at page 99:

"Nor does an interstate journey justify federal regulation of local activity which follows the termination of that journey. *A. L. A. Schechter Poultry Co. v. United States*, 295 U. S. 493."

It is difficult to conceive that this Court decided that the *Schechter* case did not come within the commerce clause upon the sole ground that the poultry which had come into the State of New York in interstate commerce had remained long enough in the possession of the brokers who sold it to the Schechter Company to be considered out of interstate commerce and into intrastate commerce. Any such conclusion would result in jurisdiction being determined on the basis of the length of time during which a particular product, coming in or passing out of the State through interstate commerce, had remained in the State either before or after processing or manufacturing within the State. It is our belief that that element was not decisive in the *Schechter* case and that it was but one of many facts in that case which this Court considered in determining that the

effect upon commerce was too remote and indirect. Furthermore, if the matter of jurisdiction were to be determined upon such a basis, there would be no possible way of reconciling the *Carter* case, *supra*, with any other case which has been decided by this Court, because certainly in that case the coal, immediately after being mined locally, was shipped directly in interstate commerce by the coal company and in no manner came to rest, either temporarily or permanently, in any other hands within the same State before being shipped in interstate commerce. Whether or not the commodities in question have come to a temporary or permanent rest within the State wherein the intrastate enterprise is located may be an element to be considered in determining the question of jurisdiction, but certainly, of itself, is far from controlling or conclusive.

Both the Board and Union also describe the respondent's activities as an integral part of the continuous stream and flow of interstate commerce and describe such activities as constituting a "bottle neck" or "throat" through which the raw materials flow from various States to the respondent's plant and through which "bottle neck" the finished products flow back into the stream of interstate commerce (Board's brief, page 18; Union's brief, pages 5-9). Reliance therefor is placed largely upon the decisions of this Court in the cases of *Stafford v. Wallace*, 258 U. S. 495, and *Chicago Board of Trade v. Olsen*, 262 U. S. 1. The attempt to place the case at bar in the same category as those cases but forcibly illustrates the extreme danger of attempting to apply, arbitrarily, and in total disregard of the facts in a given situation, abstract principles or formulas. There is no more similarity in the facts between the case at bar and those cases than there is between the case at bar and the *Jones & Laughlin* case, *supra*. In the *Stafford* case, *supra*, Congress, after many investigations,

found that individual packing houses were taking advantage of their control over the stockyards and connected facilities to control the prices of cattle and although Congress undertook to regulate the activities of the stockyards in that phase of commerce and dealers in similar subjects, this Court found that although the Act of Congress was literally one regulating a local activity, yet those activities were connected with the general current of commerce to a substantial degree. The *Olsen* case, *supra*, involved the Grain Futures Act providing for the direct regulation of the practices of grain exchanges, the primary object being to control dealings in grain futures, and in the first instance, it did so through the device of a prohibitory tax, later invalidated by this Court in *Hill v. Wallace*, 259 U. S. 44. The second attempt to regulate future trading came, after a series of investigations into its abuses had led to the conclusion that such trading, unless subjected to regulation, could have disastrous effects upon commerce in grains. The Court upheld the Grain Futures Act in the *Olsen* case, although the activities of the grain exchanges and their members were purely local in character, applying a theory similar to that applied in the *Stafford* case. In the *Stafford* case, the Government was primarily concerned with preventing a conspiracy to restrain interstate trade and setting up some method of punishing such a conspiracy and this Court felt that if Congress could punish for a conspiracy to restrain interstate trade, it was a necessary consequence that it could provide means for preventing such conspiracies from the outset. Both the *Olsen* and the *Stafford* cases dealt with a situation that involved a focal point through which the stream of commerce shifted on its way from producer to ultimate consumer. Both decisions took a practical view of commerce and avowed that the power of Congress was not to be defeated by the

fact that its objects were merely local incidents of interstate commerce.

The *Olsen* case and the *Stafford* case are not, and should not be construed as, controlling in the case at bar. If we are arbitrarily to apply the general principles enunciated in those cases without regard to the very definite differences in the facts, we might as well totally disregard the admonition that every case must be decided upon its own facts and that whether particular intrastate activities have a close and substantial relation to interstate commerce and substantially affect that commerce, within the meaning of the Act, is always a question of degree.

The Board suggests in its brief that the respondent is relying solely upon the fact that he has title neither to the unfinished goods nor the finished garments which he manufactures as the basis for disclaiming the Board's jurisdiction. It cites two Circuit Court decisions (*National Labor Relations Board v. National New York Packing & Shipping Co.*, *supra*; *National Labor Relations Board v. Hopwood Retinning Co.*, 98 Fed. (2d) 97) as authority for the proposition that title has no bearing upon the question of whether unfair labor practices in a particular enterprise affect interstate commerce within the meaning of the Act. It is not our contention that the mere fact that the respondent has no title at any time to either the raw materials or the finished garments which he manufactures is dispositive of the question of jurisdiction. Our only contention is that the fact is one to be considered with all of the other facts and circumstances in the case and that it is an indication that the respondent's business is not one which is engaged in or affects interstate commerce within the meaning of the Act. A reference to the two cases last above will disclose that the Board was found to have jurisdiction therein because the enterprise, in each case, involved certain activi-

ties upon its part in interstate commerce, such as the transportation, or the arranging for transportation as the agent of out-of-state buyers, in interstate commerce, of merchandise belonging to others. Quite naturally, the fact that the enterprises in question had no title to the goods of their customers at any time was not considered controlling, in view of their activities in, or directly affecting, interstate commerce. That the courts recognize the distinction between situations such as those in the cases cited by the Board and those in the case at bar is very clearly illustrated in the recent case of *National Labor Relations Board v. Fashion Piece Dye Works, Inc.*, decided November 28, 1938. (C. C. A. 3rd) No. 6559, in which Judge Maris, speaking for the Court, said:

"The situation here is essentially similar [referring to the *Hopwood Retinning Co.* case.] * * *

"The respondent relies upon *National Labor Relations Board v. Fainblatt*, 98 F. (2d) 615, in which this Court, one judge dissenting, held that a New Jersey tailoring concern which was engaged exclusively in finishing garments for a New York concern from cloth owned and furnished by the latter was not subject to the provisions of the Act. That case, however, is clearly distinguishable, and is not controlling here because there it appeared that Fainblatt engaged in no interstate transportation whatever, whereas in the case before us the respondent itself transported at least fifty per cent of the textiles to be processed into the State and the same percentage of the finished product out of the State."

Both the *National New York Packing & Shipping Co.* and the *Hopwood Retinning Co.* cases were similar to the

Fashion Piece Dye Works case on the facts and the reasoning of the Court in the last mentioned case is a sufficient answer to the Board's contention.

Both Board and Union argue that to permit the respondent to escape the jurisdiction of the Board will, in effect, result in a large portion of the women's garment industry escaping the jurisdiction of the Board by the formation of manufacturing units organized in a manner similar to the business of the respondent (Board's brief, pages 30-24; Union's brief, page 9). As to this, we need say only that such does not follow. The record clearly shows that the respondent's business was organized in its present form long before the Act was adopted by Congress¹ and there is not one scintilla of evidence that his business was organized for the purpose of evading the provisions of the Act. To reason that one whose business has been lawfully organized in such a manner as to lawfully avoid the jurisdiction of the Board should be subjected to that jurisdiction, because of the possibility that others might unlawfully reorganize their businesses in an effort to unlawfully evade the Act, is to say that the law abiding citizen should be penalized and punished for the acts of the criminal as a possible deterrent to others who might be tempted to commit such criminal acts—a *reductio ad absurdum*. Certainly, if proper evidence presented itself in a given situation that an attempt had been made to illegally and unlawfully evade such Federal regulation, appropriate consequences could be visited upon the offender and he could readily be brought within such regulation. Again we say that the mere fact that all enterprises organized in a manner similar to that of the respondent may escape the jurisdiction of the Board, if this respondent is

¹The Board found that the respondent's business was established in August 1934 (I. R. 473). The National Labor Relations Act was approved July 5, 1935.

permitted to escape that jurisdiction, is no reason for finding such jurisdiction here. Unless that jurisdiction can be found within the Constitution and appropriate statutes, there is no basis for it whatsoever, no matter how sociably desirable it might otherwise appear to be.

The briefs of both Board and Union are also replete with suggestions that the Act should be applied to this respondent because the women's garment industry is basically predicated upon interstate commerce; because the demoralization of that industry would have national interstate repercussions throughout the industry; and because if the Act is not applied to this small, wholly intrastate concern, which is an integral part of a large industry engaged in interstate commerce activities, the Federal protection designed by the Act will be denied to numerous workers similarly situated to the respondent's workers in the industry and their rights of self-organization and collective bargaining will be destroyed. In support of these suggestions, reliance is placed upon numerous statistical and industrial periodicals and other references (Board's brief, pages 21-24; Union's brief, pages 2-4). It is respectfully submitted that neither the suggestions nor the data submitted in support thereof should be considered by this Court in reaching its conclusions. In the first place, the record is barren of evidence in support of these suggestions and no findings with respect thereto, based upon substantial evidence, have been made by the Board. That there should be such evidence and findings, if they are to be considered by this Court, has heretofore been clearly indicated. *National Labor Relations Board v. Friedman-Harris Marks Clothing Co.*, *supra*. But even if the record contained such evidence and findings, they could not, and should not, be used for the purposes suggested. While there was such

evidence and findings in the *Friedman-Harry Marks* case, this Court did not find that company subject to the jurisdiction of the Act because it was a component part of the men's clothing manufacturing industry (which was shown to be an industry dependent in its operations upon interstate commerce), but rather because it, while a local manufacturing concern, was actually engaged in interstate commerce in many respects. It seems to us that the findings in that case of the interstate nature of the industry as a whole were considered more by this Court as corroboration of its conclusion that the company was actually engaged in certain phases of interstate commerce, than as proof that it was subject to the provisions of the Act because it was a component part of an industry which, as a whole, was dependent upon interstate commerce. That this Court has based its conclusions upon the nature of the particular enterprise being considered by it and the effect of that particular enterprise upon interstate commerce, within the meaning of the commerce clause, rather than upon the nature of the entire industry of which such enterprise is a part, is amply borne out by reference to the *Schechter* case, *supra*. In that case, notwithstanding an unreversed finding that the demoralization of the New York poultry market had national interstate repercussions throughout the industry, this Court held that such demoralization, in its effect upon interstate commerce, was only "indirect".

As to the suggestion that if the respondent is excepted from the Act, Federal protection will be denied to all other similarly situated workers in the women's garment industry, many reasons in answer thereto suggest themselves. In the first place, there is no proof that such is, or will be, the fact. In the second place, since practically all business enterprises in this country are component parts of some

nation-wide industry and since all nation-wide industries are dependent largely upon interstate commerce to some degree, what possible reason could there be for the rule, many times reiterated by this Court and referred to above, that the applicability of the Act must be decided upon the facts in each case, if we are to reason that all of the component parts of every nation-wide industry, which is dependent upon interstate commerce as an industry, are to be considered as affecting such commerce, within the meaning of the Act, regardless of the facts? In the third place, the respondent's business, being wholly intrastate in character, is subject to the plenary power of the State of New Jersey and his employees have the protection and benefit of such power.¹ Even if we concede, for the sake of argument, the social desirability of subjecting the respondent's business to Federal regulation for the protection of his workers, such social desirability can afford no constitutional authority for so doing. If such were the case, this

¹The common law, decisions and statutes of the State of New Jersey provide, *inter alia*, the following rights and protective remedies to employees engaged in an intrastate enterprise:

1. The right to bargain collectively with their employer, and by peaceable means go on strike to accomplish their purposes.

International Ticket Co. v. Wendrich, 122 N. J. Eq. 222, 193 Atl. 808 (Ch. 1937)

Canter Sample Furniture House, Inc. v. Retail Furniture Employees Local No. 109, et al., 122 N. J. Eq. 575, 196 Atl. 210 (Ch. 1937)

REVISED STATUTES OF NEW JERSEY 1937, 34:12-1—See Appendix.

2. The right to picket by peaceable means.

Evening Times Printing and Publishing Co. v. The American Newspaper Guild, et al., 124 N. J. Eq. 71, 199 Atl. 508 (E. & A. 1938)

REVISED STATUTES OF NEW JERSEY 1937, 2:29-77—see Appendix.

3. It is a criminal offense for the employer to exact from the employee, as a condition of his employment, that he refrain from joining or renouncing his membership in a labor organization.

Harris v. Geier, 112 N. J. Eq. 99, 164 Atl. 50 (Ch. 1932)

REVISED STATUTES OF NEW JERSEY 1937, 34:12-2, *et seq.*—see Appendix.

4. The right given to employees to settle their disputes with employers by arbitration, with the necessary legal machinery to effectuate the same.

REVISED STATUTES OF NEW JERSEY 1937, 34:13-1, *et seq.*

Court certainly should have extended the power of the Federal Government over the poultry marketing business in the *Schechter* case, because there it definitely appeared in the record that such Federal regulation was socially desirable. But, as this Court said in that case, at page 550:

“Without in any way disparaging this motive, it is enough to say that the recuperative efforts of the Federal Government must be made in a manner consistent with the authority granted by the Constitution.”

If the Board's reasoning has any efficacy, it would necessarily result in the conclusion that all Federal legislation which is socially desirable, or which has socially desirable objectives, confers upon the Federal Government jurisdiction over the subject matters thereof, whether or not that legislation meets the constitutional requirements. If this conception is driven to its logical extremes, it becomes difficult to discover any act or transaction which cannot be said to have some effect upon interstate commerce within the meaning of the Act.

While it is true that the Federal power to protect interstate commerce need not await the disruption of that commerce (*National Labor Relations Board v. Jones & Laughlin Steel Corp.*, *supra*; *National Labor Relations Board v. Santa Cruz Fruit Packing Company*, *supra*; *Consolidated Edison Co. v. National Labor Relations Board*, *supra*), there must be some substantial proof that it has been, or is likely to be, substantially affected by the alleged unfair labor practices. In the case at bar, the record is absolutely devoid of proof of either. The authority of the Federal Government over interstate commerce may not be pushed

to such an extreme as to destroy the distinction, which the commerce clause establishes, between commerce among the several States and the internal concerns of a State. That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our Federal system.

A. L. A. Schechter Poultry Corp. v. United States,
supra
National Labor Relations Board v. Jones & Laugh-
lin Steel Corp., supra

The scope of the power of Congress over interstate commerce may not be so extended as to embrace effects upon interstate commerce so indirect and remote that to embrace them would effectually obliterate the distinction between what is national and what is local and create a completely centralized government.

A. L. A. Schechter Poultry Corp. v. United States,
supra
National Labor Relations Board v. Jones & Laugh-
lin Steel Corp., supra

True it is indeed, to quote Mr. Justice Cardozo in the *Schechter* case, *supra*, at page 554:

“If centripetal forces are to be isolated to the exclusion of the forces that oppose and counteract them, there will be an end to our Federal system.”

To paraphrase that which was said by the Court in the *Schechter* case, to find “immediacy or directness” in the case at bar is to find it ‘anywhere’, a result inconsistent with the maintenance of our Federal system.

The importance of maintaining the distinction between what is national and what is local was forcefully recognized by the Circuit Court of Appeals for the Ninth Circuit in the case of *National Labor Relations Board v. Idaho-Maryland Mining Corp.*, *supra*. The facts in that case were strikingly similar to those in the case at bar. The respondent was engaged in gold mining in the State of California. It purchased all of its machinery and equipment in that State and sold all of its finished products to two customers in that State. The machinery and equipment purchased in California were brought into the State in interstate commerce and its finished products, although sold in California, subsequently were shipped in interstate commerce by its customers throughout the United States. The Board found that while the respondent was not engaged in interstate commerce, its operations "affected commerce" within the meaning of the Act. The Court, in reversing the decision of the Board, said, at page 131:

"The finding is not supported by evidence. Respondent's activities—including its labor practices—are wholly intrastate. It buys nothing, sells nothing, ships nothing, and nothing is shipped to it, in interstate or foreign commerce. That respondent is not, itself, engaged in interstate or foreign commerce is conceded. There is no evidence that its activities have any close, intimate or substantial relation to such commerce or the free flow thereof would be obstructed by any dispute to which respondent's labor practices might lead.

"There is no merit in the Board's contention that purchases by respondent, in California, of supplies and equipment manufactured in other states are so closely, intimately and substantially related

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to interstate commerce as to warrant the Board's assumption of jurisdiction in this case. * * * The relation, if any, between interstate commerce and respondent's purchases of supplies and equipment is indirect, remote and unsubstantial.

"If however, such acts may be said to constitute commerce, it is a commerce to which respondent's activities are not closely, intimately or substantially related, and which respondent's labor practices do not directly or substantially affect."

In concluding this argument, we wish to be understood as fully appreciative of the fact that nothing in the text of our Constitution or in the decided cases confers jurisdiction under the Act explicitly or withholds it beyond peradventure. We agree that there are no ready "mathematical or rigid formulas" by which it may or should be resolved and we are aware too that, under the Act, "the subject of Federal power is still 'commerce,' and not all commerce but commerce with foreign nations and among the several States", and that what is interstate commerce (or what is intrastate commerce) should be approached as "a practical conception". We further appreciate that whether or not Federal control over activities long regarded as local has now become "essential or appropriate", involves considerations "of degree", as we understand that term, and that the determination of what are "direct" and "indirect" "effects upon interstate commerce" within what may be accepted tests of Federal authority under the commerce clause, should not be made in an "intellectual vacuum" and in disregard of the structure and scope of present-day enterprise, nor, on the other hand, in disregard or frustration of protective regulatory measures taken

by the States as well as by the Congress. And by a traditional use of the expressions "direct" and "indirect interference" with commerce, it has at times, at least, seemed that "we are doing little more than using labels to describe a result rather than any trustworthy formula by which it is reached".

As indicated above, we do not challenge that the question whether or not particular activities do affect interstate commerce in such a close and intimate fashion, or in any other manner heretofore suggested by this Court, as to give rise to a need and basis for Federal control, and so to lie within authority which might be conferred upon the Board, has been left, by the statute as interpreted by the decisions thus far, to be determined "as individual cases arise". But we do say that a Federal board may not broaden its powers by merely asserting and assuming, not establishing, them.

In some senses, it is true that practically everything which takes place in American business, and indeed in American life, has some effects upon commerce between the States and tends, or may tend, to increase, diminish or affect materially that commerce. If the Board's contention in this cause is to be sustained, the Board at its own uncontrolled option can bring under its own jurisdiction the labor relations and practices of practically every business enterprise, small or large, in the United States, and other Federal agencies can apply the same self-expanding process to confer on themselves authority over practically any other phase of business or of life.

Generalized findings in the terms of the statute cannot remove such matters from plenary judicial review. Boundaries and demarcations between Federal and State authority must still exist and be defined and enforced. They

may not be moved or obliterated at will by administrative discretion. Their declaration and enforcement remains a prime task of unfettered judicial statesmanship.

It is respectfully submitted, therefore, that the respondent is not subject to the National Labor Relations Act because his business is one admittedly intrastate in character, with no interstate ramifications whatsoever, bearing no close and intimate relation to interstate commerce and having no direct and substantial effect upon such commerce, within the meaning of the Act.

II

Even if the respondent is subject to the jurisdiction of the board, that jurisdiction should not be exercised in this case.

A. The respondent's business is wholly intrastate in character and, therefore, subject to the plenary power of the State of New Jersey.

Even if we assume that the Board may have jurisdiction over the respondent because of the effect which unfair labor practices in his business may have upon interstate commerce, there is no justification for the exercise of that jurisdiction. His business is admittedly solely intrastate in character, and, as such, is subject to the plenary power of the State of New Jersey. This Court said in the case of *Pennsylvania Railroad Company v. Knight*, 192 U. S. 21, at page 27:

"But when service is wholly within a State, it is presumably subject to State control. The burden is on him who asserts that, though actually within, it is legally outside the State; and unless the interstate character is established, locality determines the question of jurisdiction."

The record is absolutely barren of any showing of necessity or appropriateness of the Board's proposed exercise of power under the commerce clause. Of course, the Board found that the alleged unfair labor practices affected interstate commerce, but that generalization falls far short of a showing that the intervention, jurisdiction and action of the Board in destruction of State regulation are essential or appropriate; it is far short of satisfying the foregoing rule that "unless the interstate character is established, locality determines the question of jurisdiction". Anything found by the Board here falls far short of overcoming the presumption that the action of the State of New Jersey, through its statute law and the decisions of its courts, to protect the safety, comfort, health, convenience and general welfare of its people, and, in particular, the respondent's employees in their relations with him, will not serve at least equally well and altogether adequately. See page 28, *supra*.

B. The board has failed to allege and clearly prove that the alleged unfair labor practices of the respondent do actually threaten interstate or foreign commerce in a substantial manner.

This Court has always said that the question of whether the alleged unfair labor practices do actually threaten interstate or foreign commerce in a *substantial* manner is necessarily presented where it is sought to apply the Federal power to a business which is purely intrastate in character, and that in determining that factual question regard should be had to all of the existing circumstances. *Consolidated Edison Co. v. National Labor Relations Board*, *supra*. Not only that, but the justification for the exercise of such Federal power must clearly appear and be supported by adequate evidence and findings of appropriate

definiteness. *Florida v. United States*, 282 U. S. 194; *Consolidated Edison Co. v. National Labor Relations Board*, *supra*. Here again, the record is barren of any evidence or findings justifying the exercise of Federal power in the case at bar. There is certainly nothing to indicate that the alleged unfair labor practices *actually* threaten interstate or foreign commerce in a *substantial* manner. The proof is all to the contrary, in fact, the proofs indicate that the business of the respondent's only customer was not, and could not be, in anywise deleteriously affected by reason of any diminution in the respondent's production. Not only that, but it is undisputed that since the time of the alleged unfair labor practices, and, in particular, since the short strike of part of the respondent's employees terminated, many of the striking employees have returned to work and are still working for the respondent, and the respondent's relations with his employees have been peaceable, harmonious and satisfactory to the employees (II. R. 49-52, 60-64, 100-105, 111, 112, 175-177, 180).

For these additional reasons, therefore, we urge that the jurisdiction of the Board should not be exercised in the case at bar.

III

It is respectfully submitted that for the reasons heretofore presented and discussed, the judgment of the Court below should be affirmed.

LEON GEROFKY,

Solicitor for Respondent.

T. GIRARD WHARTON,

JOSEPH HALPERN,

Of Counsel.

APPENDIX

The provisions of the Revised Statutes of New Jersey, 1937, referred to in the footnote on page 28, are as follows:

34:12-1. *Combinations to persuade others as to employment not unlawful.* It shall not be unlawful for any two or more persons to unite, combine or bind themselves by oath, covenant, agreement, alliance or otherwise, to persuade, advise or encourage, by peaceable means, any person or persons to enter into any combination for or against leaving or entering into the employment of any person.

34:12-2. *Employer shall not require renouncement of membership in society or brotherhood as condition of employment.* No corporation doing business in this State shall, directly or indirectly, require, as a condition of employment of labor in any branch of its service, that any applicants for employment shall, either individually or collectively, be required to sign any paper, document, or writing of any description, by which an obligation is made or implied of renouncing existing membership in an organization, society or brotherhood, or by which a promise is given of not joining such organization at any future time.

34:12-3. *Employer shall not require employees to renounce membership in or refrain from joining society or brotherhood.* No corporation doing business in this state shall require directly or indirectly that any individuals shall either individually or collectively, in any manner promise to renounce existing membership in a lodge, brotherhood, or labor organization of any kind, or promise to refrain from

joining any such lodge, brotherhood or organization at any future time.

34:12-4. *Penalty.* Any violation of either section 34:12-2 or section 34:12-3 of this title shall be punishable by a fine not to exceed five hundred dollars or three months' imprisonment, or both, as the court may direct.

34:12-5. *Contracts against membership in labor unions or employers' organizations void.* Every contract, agreement, promise or undertaking whether written or oral, express or implied between an employer and employee or prospective employee whereby either party promises or agrees not to join, become or remain a member of any organization or combination of employers or employees, or to withdraw from an employment relation in the event that he join, become or remain a member of any such organization or combination is declared to be contrary to public policy and wholly void and shall not provide or afford any basis for legal or equitable relief in any court.

34:13-1. *Appointment of arbitrators.* Whenever any grievance or dispute of any nature shall arise between any employer, joint stock association, company or corporation engaged in manufacturing hereinafter in this chapter termed "employer", and his, their or its employees, it shall be lawful by the mutual consent of the parties to submit the same in writing to a board of arbitrators for hearing and settlement. The board shall be composed of five persons. A majority of the employees, at a meeting duly held for that purpose, shall have the power to designate two arbitrators; the employer shall have

the power to designate two arbitrators; and the four arbitrators so designated shall designate a fifth person as arbitrator, who shall be the chairman of the board.

* * * * *

34:13-3. *Board to select secretary and to give notice of time and place of hearing.* When the board is ready for the transaction of business, it shall select one of its number to act as secretary, whose duty it shall be, when ordered by the board, to give at least two days' notice in writing to the parties to the dispute of the time and place of hearing the same, which notice may be served personally on the parties or by fixing the same to the principal outer door or gate of the establishment of the employer. Where for any reason, service cannot be so made the notice may be served as the board shall direct.

34:13-4. *Subpoenas for production of books; attendance of witnesses; penalty.* It shall be lawful for any justice of the peace, or the clerk of any court of record within the county wherein such board of arbitrators may be, to issue subpoenas for the production of books and papers and for the attendance of witnesses before the board. If any such witness, when so subpoenaed, shall not appear in accordance with the command of such writ, or, if appearing, shall refuse to be sworn or affirmed and give evidence, he shall be liable to the same fines and penalties as he would be by law for such default or refusal if committed in any court of record in this state.

34:13-5. *Proceedings before board.* Witnesses shall be examined on oath or affirmation which oath or affirmation the chairman of the board is empowered

ed to administer. A majority of the board may provide for the examination and investigation of books, documents and accounts pertaining to the matters in dispute and belonging to either party. The board may unanimously direct that instead of producing books, papers and accounts before the board, an accountant agreed upon by the entire board may be appointed to examine such books, papers and accounts, and such accountant shall be sworn well and truly to examine such books, documents and accounts as may be presented to him, and to report the result of his examination in writing. Before the examination, the information desired and required by the board shall be plainly stated in writing and presented to the accountant, which statement shall be signed by the board. Attorneys at law or other agents of either party to the dispute shall not be permitted to appear or take part in any of the proceedings of the board, but the same shall be, as far as possible, voluntary.

* * * * *

34:13-7. *Decision of board; time, requisites and effect.* After the matter in dispute has been fully heard, the board, or a majority thereof, shall, within five days, render a decision thereon, which decision shall be reduced to writing, signed by the arbitrators agreeing thereto, and shall set forth such details as will clearly show the points considered by the board and the nature of the decision. The decision shall be a final settlement of the matters referred to the board, and shall be binding and conclusive between the parties. It shall be executed in three parts, one

copy of which shall be given to each of the parties to the dispute, and the remaining copy shall be filed in the office of the clerk of the county, there to remain of record.

* * * * *

2:29-77. *Injunction in labor disputes.* No restraining order or writ of injunction shall be granted or issued out of any court of this state in a case involving or growing out of a dispute concerning terms or conditions of employment, enjoining or restraining any person or persons, either singly or in concert:

a. From terminating any relation of employment, or from ceasing to perform any work or labor, or from peaceably and without threats or intimidation recommending, advising or persuading others so to do; or

b. From peaceably and without threats or intimidation being upon any public street, highway or thoroughfare for the purpose of obtaining or communicating information, or to peaceably and without threats or intimidation persuade any person or persons to work or abstain from working, or to employ or to cease to employ any party to a labor dispute, or to peaceably and without threats or intimidation recommend, advise or persuade others so to do, provided such persons remain separated one from the other at intervals of ten paces or more.

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IN THE
Supreme Court of the United States

October Term, 1938.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

AGAINST

BENJAMIN FAINBLATT and MARJORIE FAIN-
BLATT, individuals, doing business under the firm
name and styles of SOMERVILLE MANUFAC-
TURING COMPANY and SOMERSET MANU-
FACTURING COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE THIRD CIRCUIT.

***Brief on Behalf of the International Ladies'
Garment Workers' Union, As Amicus Curiae.***

ELIAS LIEBERMAN,
*Attorney for the International
Ladies' Garment Workers'
Union, as Amicus Curiae.*

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- Barkin and Page: Work Materials No. 9, Division of Review, National Recovery Administration, Vol. III, p. 851
- Dress Manufacturing Code (Code No. 64, Article VII)
- Governor Smith's Advisory Commission Including Report by John Dickenson and Morris Kolchin, pp. 7 and 8
- Herbert Harris, American Labor (1939), p. 218
- International Ladies' Garment Workers' Union, New York Joint Board of Waist & Dress Makers Union, 1937
- International Ladies' Garment Workers' Union, Report of General Executive Board to the 23rd Convention, May, 1937, p. 24
- Lazare Teper, The Women's Garment Industry, (1937) pp. 8, 12
- Levine, The Women's Garment Workers (1924) pp. 398, 399
- The Code of Fair Competition of the Coat and Suit Industry (Code No. 5)
- U. S. Biennial Census of Manufacturers (Commerce Department, 1935) p. 398

IN THE
Supreme Court of the United States

OCTOBER TERM, 1938.

NATIONAL LABOR RELATIONS BOARD,
Petitioner.

AGAINST

BENJAMIN FAINBLATT and MARJORIE FAINBLATT, individuals, doing business under the firm name and styles of SOMERVILLE MANUFACTURING COMPANY and SOMERSET MANUFACTURING COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE THIRD CIRCUIT.

**Brief on Behalf of the International
Ladies' Garment Workers' Union
As Amicus Curiae.**

The issues in this case directly affect a great number of the members of the International Ladies' Garment Workers' Union. Tens of thousands of the members of this Union, employed in the needle industry, work directly for "contractors", such as respondents, instead of working for the manufacturer or "jobber". Unless the decision of the Court below is reversed, the rights of self-organization and collective bargaining of these workers will be destroyed.

Since the brief for the National Labor Relations Board contains a statement of the facts, an analysis of the nature of respondents' business, and of the

unfair labor practices committed by the respondents, we will not burden the Court by covering these same points. We will limit ourselves to a discussion of one question—is the **National Labor Relations Act** applicable to respondents—"contractors" engaged in the manufacture of women's sport clothing for a "jobber" who supplies the raw materials and distributes the finished products through channels of interstate commerce?

Statement.

The Needle Industry—The "Contractor" and the "Jobber".

The needle industry employs about 1,000,000 workers.¹ The value of the annual product of one of its branches is well over a billion dollars.²

The average shop engaged in the manufacture of women's clothing branch of the needle industry is comparatively small, employing about thirty workers, slightly more during busy seasons and less during slack periods. Most of the workers in these branches of the needle industry are women. For every man employed there are at least three women or girls. In the small towns the proportion of women workers is even greater.³

The functions of the manufacturer in the needle trade industry generally have embraced purchasing of raw materials, creating of styles, processing or

1. Barkin and Page: *Work Materials* No. 9, Division of Review, National Recovery Administration, Vol. III, p. 851, showed that 996,200 workers were employed in the needle industry covered by forty-five apparel codes.

2. In the year 1935 the total value of women's, misses' and children's clothing produced in the United States was \$1,269,624,289.00. U. S. Biennial Census of Manufacturers (Commerce Department, 1935) p. 398.

3. See Lazare Teper, *The Women's Garment Industry* (1937) p. 8.

manufacturing the garment and distributing or selling the finished products or garments to storekeepers who ultimately sell to the consumers.

The development of the needle industry in recent years has resulted in specialization of the various functions of the manufacturer, thus creating the so-called "jobber" and the so-called "contractor". The "jobber" retains for himself the functions of buying the raw materials, of creating styles and of distributing or selling the garments. The "contractor" fulfills the function of processing or manufacturing the raw materials into garments for distribution by the "jobber".⁴ In some instances, the "jobber" prefers to retain title in the goods; in other instances, he prefers that the raw materials be delivered and charged to the "contractor" who in turn delivers the finished product to the "jobber" and charges a price previously agreed upon for the garment.

The progressive increase of specialization of the functions of manufacturing by the "jobber"—"contractor" technique has resulted in the shifting of the workers to the "contractor" shops. At present thousands of workers in the needle industry are employed in the "contractor" shops. In 1914, the number of "contractors" in the women's clothing industry constituted only twenty (20%) per cent. of the total number of establishments; in 1933 the number of "contractor" shops had risen to about thirty-two (32%) per cent.⁵ In 1937, a survey made of the silk dress industry of the New York metropolitan area revealed

4. The description of functions of the "contractor" and the "jobber" is drawn from three sources: Levine, *The Women's Garment Workers* (1924) pp. 398, 399; Governor Smith's Advisory Commission to the Cloak, Suit and Shirt Industry, including report of an investigation by John Dickenson and Morris Kolehnik, pp. 7 and 8; and Herbert Harris, *American Labor* (1939), p. 218. The "contractor" is sometimes described as a "submanufacturer".

5. Lazare Teper, *The Women's Garment Industry*, *supra*, p. 12.

that sixty-five (65%) per cent. of the establishments were "contractor" shops and that they employed seventy-one (71%) per cent. of the total number of workers.⁶ A similar study of the coat and suit industry in 1937 disclosed that the "contractor" shops in that industry totalled fifty-eight (58%) per cent. of the total number of establishments and that fifty-nine (59%) per cent. of the workers were employed in these shops.⁷

The employers and labor unions in the needle industry, taking a realistic view, have recognized the dependence of the industry on the mutually cooperative functions of the "jobber" and the "contractor". Collective labor agreements executed by the International Ladies' Garment Workers' Union are entered into with the "jobbers" and the "contractors" simultaneously, and contain mutually dependent conditions. Under these labor agreements "jobbers" assume responsibility for the performance of certain conditions in the "contractor" shops. The mutually cooperative responsibility of "jobbers" and "contractors" for labor conditions was recognized in some Codes of Fair Competition of the National Recovery Administration for the needle industry.⁸

6. Source: International Ladies' Garment Workers' Union, New York Joint Board of Waist & Dress Makers Union, 1937 (Union census of metropolitan area).

7. Source: International Ladies' Garment Workers' Union, Report of General Executive Board to the 23rd Convention, May, 1937, p. 24.

8. The Code of Fair Competition of the Coat and Suit Industry (Code No. 5), provided that "all members of the Industry who caused their garments to be made by contractors and submanufacturers * * * shall adhere to the payment of rates for such production in an amount sufficient to enable the contractor or submanufacturer to pay the employees the wages and earnings provided for in this Code, together with an allowance for the contractor's overhead" (Article VII). See also Dress Manufacturing Code (Code No. 64, Article VII).

Specification of Errors to be Urged.

The court below erred in holding that the National Labor Relations Act could not validly be applied to respondents' activities.

We contend that:

1. *Respondents' activities are an integral part of the continuous stream and flow of interstate commerce.*

2. *Respondents' activities bear a close and intimate relation to interstate commerce; and respondents' unfair practices burden and obstruct interstate commerce.*

3. *The Act is applicable to the respondents under the "bottle neck" and "final destination" tests laid down by the Court.*

ARGUMENT.

I.

Respondents' activities are an integral part of the continuous stream and flow of interstate commerce.

The facts in the instant case forcibly demonstrate that respondents' activities constitute a "bottle neck" or "throat" through which the raw materials flow from various states to the respondents' plant and through which "bottle neck" the finished products flow back into the stream of interstate commerce.

The respondents' receive the raw materials from the New York plant of the Lee Sportswear Company (I. R. 29). Some materials are cut and some are uncut. Materials are also delivered directly to the respondents from mills located outside of the State

of New Jersey (I. R. 24, 92). The respondents process all the raw materials into women's sport clothing (I. R. 23-24).

The Lee Sportswear Company is a partnership located in New York City composed of two sons and one daughter of Benjamin Fainblatt, one of the respondents herein (I. R. 46-47). It is called a "jobber" and retains for itself the functions of buying the raw materials and of distributing and selling the garments. The respondents are called "contractors" and they fulfill the function of processing the raw materials into garments which are sold and distributed by Lee Sportswear Company "throughout the United States" (I. R. 88-89).

Benjamin Fainblatt's son, Sol Fainblatt, who is one of the partners in the Lee Sportswear Company, occupies space in respondents' plant *free of charge* (I. R. 50-52). He directs the shipments of the finished products. Some of the goods are sent directly from respondents' plant to customers throughout the United States and the rest is sent back to the Lee Sportswear Company in New York City for distribution in various states (I. R. 88-90).

It can thus be seen that the respondents' activities in processing the raw materials into finished products make possible the flow of raw materials in interstate commerce to the State of New Jersey and make possible the flow of finished products from the State of New Jersey to various states of the Union.

The respondents' enterprise is as much a "throat" through which the current of interstate commerce flows as existed in the case of *Stafford v. Wallace*, 258 U. S. 495. This Court, at pages 575-6, in the *Stafford* case, declared:

"Thousands of head of live stock arrive daily by carload and trainload lots, and must

be promptly sold and disposed of and moved out to give place to the constantly flowing traffic that presses behind. The stockyards are but a *throat through which the current flows*, and the transactions which occur therein are only incident to the current from the West to the East and from one state to another. Such transactions cannot be separated from the movement to which they contribute and necessarily take on its character." (Italics briefer's.)

The raw materials delivered to the respondents and the finished product manufactured by the respondents do not come to a *permanent* rest at the respondents' plant but rather continue their flow in interstate commerce. In this respect the case at bar is easily distinguished from the case of *A. L. Schechter Poultry Co. v. U. S.*, 295 U. S. 495. In the latter case the Court held that:

"The poultry had come to a *permanent rest* within the state. It was not held, used or sold by defendants in relation to any further transactions in interstate commerce and was not destined for transportation to other states." (Italics briefer's.)

The Court distinguished the *Schechter Poultry Co.* case from other decisions of the Court upholding Congressional power, by virtue of the fact that the poultry had come to a *permanent rest* within the state. The Court declared:

"Hence decisions which deal with a stream of interstate commerce—where goods come to rest within a state temporarily and are later to go forward in interstate commerce—and with the regulations of transactions involved in that practical continuity of movement, are not applicable here."

In the case at bar neither the raw materials shipped to respondents nor the finished product manufactured by the respondents came to a *permanent* rest in the State of New Jersey. On the contrary, the goods came to a *temporary* rest in respondents' plant for the purpose of enhancing their value and of continuing their movement in interstate commerce. A mere temporary rest of the goods in the respondents' plant for the purpose of processing does not cause such a break in the "stream" or "current" of commerce as to render the Act inapplicable. (See *Stafford v. Wallace, supra.*)

The Court upheld the jurisdiction of the National Labor Relations Board in the case of *N. L. R. B. v. Friedman-Harry Marks Clothing Co., Inc.*, 301 U. S. 58, and approved the conclusions of the Board that:

"The men's clothing industry is thus an industry which is nearly entirely dependent in its operation upon purchases and sales in interstate commerce and upon interstate transportation."

The women's clothing industry is entirely dependent in its operations upon purchases and sales in interstate commerce and upon interstate transportation. In this respect, it is very similar to the men's clothing industry which has already been found to be in interstate commerce. The flow of interstate commerce in the women's clothing industry cannot continue without the manufacturing process.

If the manufacturing process had been in the hands of Lee Sportswear Company, it would be wholly analogous to the *Friedman-Harry Marks Clothing Co.* case, *supra*. The mere fact that the respondents and the "jobber" found it to their respective advantage to specialize in their functions, wherein the Lee Sportswear Company specializes in the function of

buying the raw materials and selling and distributing the product, and the respondents specialize in the function of the manufacturing process, and the joint activities of both make the flow of the product in interstate commerce continuous, does not in any way deprive the Board of its jurisdiction over the activities of the respondents.

As has been seen, the growing tendency in the needle industry is to concentrate the manufacturing process in the hands of the "contractor". As a result the "jobber" directly employs few, if any, of the workers. The "contractor" is the one who engages the workers and is directly concerned with the labor relations of the manufacturer's enterprise. To exempt the "contractor" from the Act would be tantamount to excluding the vast bulk of workers in the needle industry from the protection which Congress intended for them by passage of the Act.

II.

Respondents' activities bear a close and intimate relation to interstate commerce and respondents' unfair practices burden and obstruct interstate commerce.

N. L. R. B. v. Jones & Laughlin Steel Co.,
301 U. S. 1, 41;

N. L. R. B. v. Friedman-Harry Marks Clothing Co., Inc., 301 U. S. 58;

Santa Cruz Fruit Packing Co. v. N. L. R. B.,
303 U. S. 453;

Stafford v. Wallace, 258 U. S. 495;

Chicago Board of Trade v. Olsen, 262 U. S. 1.

This Court has upheld the power of Congress to regulate enterprises whose practices cause obstruc-

tions to interstate commerce. In the case of *N. L. R. B. v. Jones & Laughlin Steel Co.*, *supra*, the Court stated:

"Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control."

Assuming, but not admitting, that the activities of the respondents when separately considered may be intrastate in character, they have such a close and substantial relation to the interstate commerce activities of Lee Sportswear Company and other mills producing raw materials that the control of the activities of the respondents is essential and appropriate to protect interstate commerce from burdens and obstructions. Therefore, Congress cannot be denied the power to exercise control under the Act over the activities of the respondents.

The same principle has been clearly enunciated by this Court in the case of *Santa Cruz Fruit Packing Co. v. N. L. R. B.*, *supra*, in which the Court held that:

"The close and intimate effect which brings the subject within the reach of Federal power may be due to activities in relation to productive industry although that industry, when separately viewed, is local."

The controlling principle of the applicability of the Act has been stated by the Court in *Jones & Laughlin Steel Co.*, *supra*, as follows:

"It is the effect upon commerce, not the source of the injury, which is the criterion."

In the case at bar, the stoppage of operations by industrial strife in the respondents' plant must have an immediate effect upon commerce and must result in substantial obstruction to the free flow of interstate commerce. Hence, the Act is clearly applicable to the respondents.

CONCLUSION.

It is respectfully submitted that respondents are subject to the Act, and that the judgment of the court below should be reversed.

Respectfully submitted,

ELIAS LIEBERMAN,
*Attorney for the International Ladies'
Garment Workers' Union, as Amicus
Curiae.*

SUPREME COURT OF THE UNITED STATES.

No. 514.—OCTOBER TERM, 1938.

National Labor Relations Board,
Petitioner,

vs.

Benjamin Fainblatt and Marjorie Fainblatt, Individuals, Doing Business under the Firm Names and Styles of Somerville Manufacturing Company and Somerset Manufacturing Company.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[April 17, 1939.]

Mr. Justice STONE delivered the opinion of the Court.

This petition raises the question whether the National Labor Relations Act is applicable to employers, not themselves engaged in interstate commerce, who are engaged in a relatively small business of processing materials which are transmitted to them by the owners through the channels of interstate commerce and which after processing are distributed through those channels.

Pursuant to § 10(b) of the National Labor Relations Act, 49 Stat. 449, 29 U. S. C. § 151 *et seq.*, the National Labor Relations Board issued its complaint charging respondents with unfair labor practices in violation of § 8(1), (3), (5) and § 2(6), (7) of the Act. After a hearing, which resulted in a decision and order of the Board, a supplemental hearing was held pursuant to order of the Court of Appeals for the Third Circuit, which resulted in a supplemental decision and an order reaffirming the Board's original findings and conclusions of law and modifying the original order in one respect not new material.

The facts, as found by the Board, are that respondents, under the name of Somerset Manufacturing Company, are engaged at Somerville, New Jersey, in the business of processing materials into various types of women's sports garments. They operate what is known as a "contract shop". The materials are supplied by and are the property of the Lee Sportswear Company, a partnership located in New York City. The cloth from which the garments

are made is usually cut by the Lee Sportswear Company in New York City and then shipped by truck to respondents' factory in New Jersey. Sometimes the raw materials are shipped, on the order of the Lee Sportswear Company, directly from the mills manufacturing them, many of which are outside of New Jersey. All the materials are manufactured at respondents' New Jersey factory under contract. The finished garments are there delivered to a representative of the Lee Sportswear Company, who ships them to the company in New York City or directly to its customers throughout the United States.

Throughout the year there is normally a continuous day-by-day flow of shipments of raw materials to respondents' factory from points without the state, and of finished garments from respondents' plant to New York City and other points outside of New Jersey. During the years 1934 and 1935 respondents appear to have finished more than a thousand dozen garments each month. In the course of the supplemental hearing in 1937 it appeared that respondents had increased their working force from sixty to approximately two hundred employees, from which the Board inferred a corresponding increase of output. Immediately preceding a strike of thirty-four of the workers in respondents' tailoring department, which occurred in September, 1935, and which the Board found to be induced by the unfair labor practices of respondents, shipments were about 80 per cent. of those for the corresponding period in 1934. Following the strike, output decreased by more than one-half, or to 38 per cent. of the shipments for the corresponding period in 1934.

The Board concluded that respondents' unfair labor practices had led and tended "to lead to labor disputes burdening and obstructing commerce and the free flow of commerce". Its order as modified directed respondents to desist from interfering with their employees' right to join a local union and from discouraging membership in the union by discharging them or discriminating against them in the terms of their employment, and it directed respondents to reinstate certain employees who had struck because of the unfair labor practices, some with back pay.

The Board's petition for enforcement of its order was denied by the Court of Appeals for the Third Circuit, 98 F. (2d) 615, on the ground that respondents were not themselves engaged in interstate commerce and had no title or interest in the raw materials or finished products which moved to and from respondents' factory in

New Jersey from and to points outside the state. We granted certiorari January 9, 1939, the question being one of public importance in the administration of the National Labor Relations Act.

Only the question of the Board's jurisdiction is raised by the petition and in briefs and argument. It has been settled by repeated decisions of this Court that an employer may be subject to the National Labor Relations Act although not himself engaged in commerce. The end sought in the enactment of the statute was the prevention of the disturbance to interstate commerce consequent upon strikes and labor disputes induced or likely to be induced because of unfair labor practices named in the Act. That those consequences may ensue from strikes of the employees of manufacturers who are not engaged in interstate commerce where the cessation of manufacture necessarily results in the cessation of the movement of the manufactured product in interstate commerce, has been repeatedly pointed out by this Court. *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 138-40; *National Labor Relations Board v. Fruehauf Trailer Co.*, 301 U. S. 49; *National Labor Relations Board v. Friedman-Harry Marks Clothing Co.*, 301 U. S. 58; *Santa Cruz Packing Co. v. National Labor Relations Board*, 303 U. S. 453, 463 *et seq.*; cf. *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197. Long before the enactment of the National Labor Relations Act it had been many times held by this Court that the power of Congress extends to the protection of interstate commerce from interference or injury due to activities which are wholly intrastate.¹

Here interstate commerce was involved in the transportation of the materials to be processed across state lines to the factory of

¹ It may prohibit wholly intrastate activities which, if permitted, would result in restraint of interstate commerce. *Coronado Coal Co. v. United Mine Workers*, 268 U. S. 295, 310; *Bedford Cut Stone Co. v. Stone Cutters Association*, 274 U. S. 37, 46; *Local 167 v. United States*, 291 U. S. 293, 297. It may regulate the activities of a local grain exchange shown to have an injurious effect on interstate commerce. *Chicago Board of Trade v. Olsen*, 292 U. S. 1. It may regulate intrastate rates of interstate carriers where the effect of the rates is to burden interstate commerce. *Houston, E. & W. Texas Ry. Co. v. United States*, 234 U. S. 342; *Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. Co.*, 237 U. S. 563; *United States v. Louisiana*, 290 U. S. 70, 74; *Florida v. United States*, 295 U. S. . . . It may compel the adoption of safety appliances on rolling stock moving intrastate because of the relation to and effect of such appliances upon interstate traffic moving over the same railroad. *Southern Ry. Co. v. United States*, 222 U. S. 20. It may prescribe maximum hours for employees engaged in intrastate activity connected with the movement of any train, such as train dispatchers and telegraphers. *Baltimore & Ohio R. R. Co. v. Interstate Commerce Commission*, 221 U. S. 612, 619.

respondents and in the transportation of the finished product to points outside the state for distribution to purchasers and ultimate consumers. Whether shipments were made directly to respondents, as the Board found, or to a representative of Lee Sportswear Company at the factory, as respondents contend, is immaterial. It was not any the less interstate commerce because the transportation did not begin or end with the transfer of title of the merchandise transported. See *Santa Cruz Packing Co. v. National Labor Relations Board*, *supra*, 463; cf. *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196, 203; *Wabash, St. Louis & Pacific Ry. Co. v. Illinois*, 118 U. S. 557; *Hanley v. Kansas City Southern Ry. Co.*, 187 U. S. 617, 619; *Morf v. Bingaman*, 298 U. S. 407; *Ingels v. Morf*, 300 U. S. 290. Transportation alone across state lines is commerce within the constitutional control of the national government and subject to the regulatory power of Congress. *Gibbons v. Ogden*, 9 Wheat 1; *Champion v. Ames*, 188 U. S. 321.

Nor do we think it important, as respondents seem to argue, that the volume of the commerce here involved, though substantial, was relatively small as compared with that in the cases arising under the National Labor Relations Act which have hitherto engaged our attention. The power of Congress to regulate interstate commerce is plenary and extends to all such commerce be it great or small. *Hanley v. Kansas City Southern Ry. Co.*, *supra*. The exercise of Congressional power under the Sherman Act, the Clayton Act, the Federal Trade Commission Act, or the National Motor Vehicle Theft Act, has never been thought to be constitutionally restricted because in any particular case the volume of the commerce affected may be small. The amount of the commerce regulated is of special significance only to the extent that Congress may be taken to have excluded commerce of small volume from the operation of its regulatory measure by express provision or fair implication.

The language of the National Labor Relations Act seems to make it plain that Congress has set no restrictions upon the jurisdiction of the Board to be determined or fixed exclusively by reference to the volume of interstate commerce involved. Section 2(6) defines commerce as "trade, traffic, commerce, transportation, or communication among the several States", without reference to its volume, and declares in subsection (7) that "The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor

dispute burdening or obstructing commerce or the free flow of commerce". Section 10(a) confers on the Board authority "to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce".

The Act on its face thus evidences the intention of Congress to exercise whatever power is constitutionally given to it to regulate commerce by the adoption of measures for the prevention or control of certain specified acts—unfair labor practices—which provoke or tend to provoke strikes or labor disturbances affecting interstate commerce. Given the other needful conditions, commerce may be affected in the same manner and to the same extent in proportion to its volume, whether it be great or small. Examining the Act in the light of its purpose and of the circumstances in which it must be applied we can perceive no basis for inferring any intention of Congress to make the operation of the Act depend on any particular volume of commerce affected more than that to which courts would apply the maxim *de minimis*.

There are not a few industries in the United States which, though conducted by relatively small units, contribute in the aggregate a vast volume of interstate commerce. Some, like the clothing industry, are extensively unionized and have had a long and tragic history of industrial strife. It is not to be supposed that Congress, in its attempted nationwide regulation of interstate commerce through the removal of the causes of industrial strife affecting it, intended to exclude such industries from the sweep of the Act. In this, as in every other case, the test of the Board's jurisdiction is not the volume of the interstate commerce which may be affected, but the existence of a relationship of the employer and his employees to the commerce such that, to paraphrase § 10(a) in the light of constitutional limitations, unfair labor practices have led or tended to lead "to a labor dispute burdening or obstructing commerce".

It is no longer open to question that the manufacturer who regularly ships his product in interstate commerce is subject to the authority conferred on the Board with respect to unfair labor

² In the year 1933 the women's clothing industry ranked ninth among manufacturing industries in number of workers employed and eighth in value of product. U. S. Biennial Census of Manufactures (Commerce Dept., 1933). In this industry the "contract shop" is common. About one-half of the 3,414 enterprises engaged in 1935 in the manufacture of women's dresses were "contract shops". U. S. Biennial Census of Manufactures (Commerce Dept., 1935). These enterprises employed an average of only about thirty-two employees each.

practices whenever such practices on his part have led or tend to lead to labor disputes which threaten to obstruct his shipments. *National Labor Relations Board v. Jones & Laughlin Steel Corp., supra; National Labor Relations Board v. Fruehauf Trailer Co., supra; National Labor Relations Board v. Friedman-Harry Marks Clothing Co., supra; Santa Cruz Packing Co. v. National Labor Relations Board, supra; Consolidated Edison Co. v. National Labor Relations Board, supra.* We cannot say, other things being equal, that the tendency differs in kind, quantity or effect merely because the merchandise which the manufacturer ships, instead of being his own, is that of the consignee or his customers in other states. In either case commerce is in danger of being obstructed in the same way and to the same extent.

Here, although respondents' manufacturing business is small, employing from sixty to two hundred employees, its product is regularly shipped in interstate commerce. The Board's finding that respondents' unfair labor practices have led and tend to lead to labor disputes burdening interstate commerce and interfering with its free flow is supported by the evidence. Moreover, the Board has found specifically that respondents' unfair labor practices in attempting to prevent the unionization of their factory did in fact lead to a strike in respondents' tailoring establishment, with a consequent reduction of about 50 per cent. in respondents' output. These findings are not challenged.

The threatened consequences to interstate commerce are as immediate and as certain to flow from respondents' unfair labor practices as were those which were held to result from unfair labor practices in *National Labor Relations Board v. Jones & Laughlin Steel Corp., supra; National Labor Relations Board v. Fruehauf Trailer Co., supra; National Labor Relations Board v. Friedman-Harry Marks Clothing Co., supra; Santa Cruz Packing Co. v. National Labor Relations Board, supra; Consolidated Edison Co. v. National Labor Relations Board, supra.* That the volume of commerce affected is smaller than in other cases in which the jurisdiction of the Board has been upheld, for reasons already stated, is in itself without significance.

Reversed.

~~Mr. Justice FRANKFURTER took no part in the consideration or decision of this case.~~

SUPREME COURT OF THE UNITED STATES.

No. 514.—OCTOBER TERM, 1938.

National Labor Relations Board,

Petitioner,

vs.

Benjamin Fainblatt and Marjorie Fainblatt, Individuals, Doing Business under the Firm Names and Styles of Somerville Manufacturing Company and Somerset Manufacturing Company.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[April 17, 1939.]

Mr. Justice McREYNOLDS, dissenting.

Mr. Justice BUTLER and I conclude that the challenged judgment should be affirmed.

Respondent, Benjamin Fainblatt, as sole owner, conducts a small plant for manufacturing wearing apparel located at Somerville, New Jersey, where he employs some sixty women. There he receives material belonging to Lee Sportswear Company of New York and under contract converts this into garments. These are delivered to the company's representative and payment is made for the work done. The owner sends the finished products to New York.

The Labor Board claims jurisdiction in respect of employment at this establishment upon the theory that the material and garments move in interstate commerce; that disapproved labor practices there may lead to disputes; that these may cause a strike; that this may reduce the factory output; that because of such reduction less goods may move across the state lines; and thus there may come about interference with the free flow of commerce between the states which Congress has power to regulate. So, it is said, to prevent this possible result Congress may control the relationship between the employer and those employed. Also, that the size of the establishment's normal output is of minor or no importance. If the plant presently employed only one woman

who stitched one skirt during each week which the owner regularly accepted and sent to another state, Congressional power would extend to the enterprise, according to the logic of the Court's opinion.

Manifestly if such attenuated reasoning—possibility massed upon possibility—suffices, Congress may regulate wages, hours, output, prices, etc.; whenever any product of employed labor is intended to pass beyond state lines—possibly if consumed next door. Producers of potatoes in Maine, peanuts in Virginia, cotton in Georgia, minerals in Colorado, wheat in Dakota, oranges in California, and thousands of small local enterprises become subject to national direction through a Board.

Of course, no such result was intended by those who framed the Constitution. If the possibility of this had been declared the Constitution could not have been adopted. So construed, the power to regulate interstate commerce brings within the ambit of federal control most if not all activities of the Nation; subjects states to the will of Congress; and permits disruption of our federated system.

Kidd v. Pearson, (1888) 128 U. S. 1, 20, 21, lucidly pointed out the necessary result of this subversive doctrine, showed how it had long been authoritatively rejected, and demonstrated its utter absurdity. A few paragraphs from that opinion may quicken estimation of what now impends.

"We think the construction contended for by plaintiff in error would extend the words of the grant to Congress, in the Constitution, beyond their obvious import, and is inconsistent with its objects and scope. The language of the grant is, 'Congress shall have power to regulate commerce with foreign nations and among the several states,' etc. These words are used without any veiled or obscure signification. As men whose intentions require no concealment generally employ the words which most directly and aptly express the ideas they intend to convey; the enlightened patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense and to have intended what they have said." *Gibbons v. Ogden*, *supra*, at page 188 [9 Wheat. 1, 188].

No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufacturers and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation, incidental thereto constitute commerce; and the regulation of commerce in the constitutional

sense embraces the regulation at least of such transportation. The legal definition of the term, as given by this court in *County of Mobile v. Kimball*, 102 U. S. 691, 702, is as follows: Commerce with foreign countries, and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation, and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities. If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate, and harvest his crop with an eye on the prices at Liverpool, New York, and Chicago? The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests—interests which in their nature are and must be, local in all the details of their successful management.

The doctrine approved in *Kidd v. Pearson* has been often applied. It was the recognized view of this Court for more than a hundred years.

United States v. E. C. Knight Co., (1895) 156 U. S. 1, 16 declared—

"Slight reflection will show that if the national power extends to all . . . productive industries, whose ultimate result may affect external commerce, comparatively little of business operations and affairs would be left for state control.

Oliver Iron Co. v. Lord, (1923) 262 U. S. 172, 178—

"Mining is not interstate commerce, but, like manufacturing, is a local business subject to local regulation and taxation. . . . Its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by contractual engagements, and persists even though the business be conducted in close connection with interstate commerce."

Schechter Corp. v. United States, (1935) 295 U. S. 495, 546, 548, 549, 550—

"If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect

upon interstate commerce, the federal authority would embrace practically all the activities of the people and the authority of the State over its domestic concerns would exist only by sufferance of the federal government. . . . The distinction between direct and indirect effects of intrastate transactions upon interstate commerce must be recognized as a fundamental one, essential to the maintenance of our constitutional system. . . . If the federal government may determine the wages and hours of employees in the internal commerce of a State . . . it would seem that a similar control might be exerted over other elements of cost, also affecting prices, such as the number of employees, rents, advertising methods of doing business, etc. All the processes of production and distribution that enter into cost could likewise be controlled. . . . But the authority of the federal government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce 'among the several States' and the internal concerns of a State. . . . The recuperative efforts of the federal government must be made in a manner consistent with the authority granted by the Constitution."


Carter v. Carter Coal Co., (1936) 298 U. S., 238, 303, 309—

"Plainly, the incidents leading up to and culminating in the mining of coal do not constitute such intercourse. The employment of men, the fixing of their wages, hours of labor and working conditions, the bargaining in respect of these things—whether carried on separately or collectively—each and all constitute intercourse for the purposes of production, not of trade. . . . The government's contentions in defense of the labor provisions are really disposed of adversely by our decision in the *Schechter* case. . . . There is no basis in law or reason for applying different rules to the two situations."

The present decision and the reasoning offered to support it will inevitably intensify bewilderment. The resulting curtailment of the independence reserved to the states and the tremendous enlargement of federal power denote the serious impairment of the very foundation of our federated system. Perhaps the change of direction, no longer capable of concealment, will give potency to the efforts of those who apparently hope to end a system of government found inhospitable to their ultimate designs.



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